



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

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INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan. 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER

SUBMISSION DEADLINE

ISSUE DATE

2

Wednesday, June 28, 2006

July 19, 2006

3

Friday, July 14, 2006

August 2, 2006

4

Friday, July 28, 2006

August 16, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

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kathleen.west@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 11, 2006, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Continuing education, 10.5, Filed **ARC 5126B** 6/7/06

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services, 105.15(1), 105.15(2),

105.15(5)"e," Notice **ARC 5137B** 6/7/06

DEAF SERVICES DIVISION[429]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Standing committees of the commission on the deaf, 1.3(5), Notice **ARC 5152B** 6/7/06

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Renewable fuel infrastructure board and programs, adopt chs 311 to 313,

Notice **ARC 5161B**, also Filed Emergency **ARC 5160B** 6/21/06

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

School nurses—statement of professional recognition, 14.140(11), Notice **ARC 5157B** 6/7/06

Special education endorsements, 15.3 to 15.20, Notice **ARC 5158B** 6/7/06

EDUCATION DEPARTMENT[281]

Community college accreditation, adopt ch 24, Notice **ARC 5135B** 6/7/06

School buses, amendments to ch 44, Notice **ARC 5136B** 6/7/06

ELDER AFFAIRS DEPARTMENT[321]

Area agencies on aging—boards of directors, 6.7 to 6.17, Notice **ARC 5138B** 6/7/06

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Professional conduct—services offered by business entities, 8.5, Filed **ARC 5169B** 6/21/06

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Air quality, 20.1, 22.4, 22.6, adopt ch 33, Notice **ARC 5154B** 6/7/06

Clean air interstate rule (CAIR); air quality emissions trading programs, 20.1, 21.1(4), 22.120,

22.122(1)"a" and "b," 22.122(3), 22.123, 22.125(3)"a"(1), 22.125(4), 22.125(5), 22.125(6)"a"(1),

22.126(1), 22.127(1), 22.131(1), 22.138(4), 22.139(4)"e," 22.143(2)"b" and "e," 22.144(2),

22.146(1), 22.148, adopt ch 34, Filed **ARC 5139B** 6/7/06

Clean air mercury rule (CAMR); air quality emissions trading programs, 22.3(5), 23.1(2), 23.1(2)"z,"

23.1(4), 23.1(5), 23.1(5)"d," 25.1(9), 25.2, 25.3, adopt ch 34, Filed **ARC 5140B** 6/7/06

Water use/water allocation program, 50.2, 50.3, 50.4(1), 50.4(1)"a," "c" and "d,"

50.5(2), 50.6, 50.6(1)"a," 50.6(2) to 50.6(5), 50.7(3)"a," 50.7(5), 50.8, 51.2,

51.5 to 51.8, 52.1, 52.2(1), 52.2(4)"b," 52.3(1)"a," "b" and "d," 52.3(2)"a" and "c" to "e,"

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52.9(3)"b," 52.9(3)"c"(3), 52.10(2)"c" and "d," 52.10(3)"c" and "d,"

52.11, 53.2, 53.4, 53.7(1), 54.7(2)"a" and "b," 54.7(4), Filed **ARC 5155B** 6/7/06

Composting of dead livestock, 105.1(2)"b," 105.3(3), 105.5(1), 105.5(3), 105.5(4), 105.6, 105.7(8),

105.8(1), 105.8(2)"g," 105.14(1)"b," 105.14(2), Filed **ARC 5149B** 6/7/06

HUMAN SERVICES DEPARTMENT[441]

Medicaid eligibility for persons receiving long-term care services,

75.5(3)"f"(1), 75.6, 75.13(2), 75.15, 75.23(1), 75.23(2), 75.23(5)"d"(1) and (3),

75.23(9) to 75.23(11), 81.13(6)"d"(1), Notice **ARC 5133B**, also Filed Emergency **ARC 5134B** 6/7/06

Medicaid coverage—exclusion of drugs used to treat sexual dysfunction, 78.1(2)"a"(2)"9,"

Filed **ARC 5132B** 6/7/06

IowaCare, 92.2(1)"a"(1), 92.2(3), 92.7(2)"a," 92.7(3)"a," Notice **ARC 5153B** 6/7/06

Child support obligations, 98.24(5), 98.43(2)"e," 98.45(5), 98.45(6), 98.47, Filed **ARC 5131B** 6/7/06

Fee schedule for child care assistance, 170.3(1)"a," 170.4(2)"a," Filed Emergency **ARC 5130B** 6/7/06

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Unfair trade practices—annuity transactions, 15.8(4), 15.68 to 15.73, Notice **ARC 5173B** 6/21/06**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Removal of Iowa River Corridor Area, Iowa County, from list of wildlife refuges,

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Wild turkey spring hunting, 98.1, 98.3, 98.4, 98.5(8), 98.6(1), 98.7,

98.9(1), 98.14, 98.15, Filed **ARC 5147B** 6/7/06Wild turkey fall hunting by residents, 99.1, 99.10, 99.11(8), 99.12, Notice **ARC 5146B** 6/7/06

Deer population management zones—penalty for violating regulations, 105.3(6), 105.3(7),

Notice **ARC 5142B** 6/7/06Jackrabbit hunting—bag limit, 107.2, Filed **ARC 5145B** 6/7/06River otter trapping season, ch 108 title, 108.6 to 108.9, Filed **ARC 5144B** 6/7/06**PHARMACY EXAMINERS BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure, registration, and permit fees, 2.3(1), 2.6, 2.9(4), 2.11, 3.10(1), 3.10(2),

8.35(4), 10.3, 12.7(2)"a," 17.3(2), Filed **ARC 5150B** 6/7/06Collaborative drug therapy management, 8.34, Filed **ARC 5151B** 6/7/06**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Membership of impaired practitioner review committee, 16.1, 16.3(7), 16.3(8),

16.4(2), 16.6(2), Filed **ARC 5170B** 6/21/06Behavioral science examiners—overpayments, 30.1, Filed **ARC 5163B** 6/21/06Cosmetology arts and sciences examiners—overpayments, 59.1, Filed **ARC 5162B** 6/21/06Dietetic examiners—overpayments, 80.1, Filed **ARC 5174B** 6/21/06Physical and occupational therapy examiners—overpayments, 199.1, Filed **ARC 5165B** 6/21/06Physical and occupational therapy examiners—overpayments, 205.1, Filed **ARC 5166B** 6/21/06

Physical and occupational therapy examiners—supervision of occupational therapy assistants

during screening process, 206.1, 206.8(2), 206.8(3), Filed **ARC 5164B** 6/21/06Psychology examiners—overpayments, 239.1, Filed **ARC 5128B** 6/7/06

Social work examiners—overpayments, continuing education sponsors, 279.1,

281.3(2)"f" to "k," Filed **ARC 5127B** 6/7/06**PUBLIC HEALTH DEPARTMENT[641]**

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Radiologist assistants, 42.1(2), 42.2(3)"a"(8), 42.6, ch 42 appendix A,

Filed **ARC 5129B** 6/7/06**REVENUE DEPARTMENT[701]**

Individual, corporation, fiduciary income tax—clarification of existing rules,

amendments to chs 38 to 42, 45, 46, 48 to 50, 52, 54, 56, 58, 59, 61, 86, 89, Notice **ARC 5177B** 6/21/06

Child and dependent care credit; early childhood development tax credit,

42.9(1), 42.29, Filed **ARC 5176B** 6/21/06**SECRETARY OF STATE[721]**

Voter registration file (I-VOTERS) management, adopt ch 28,

Filed Emergency After Notice **ARC 5171B** 6/21/06**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Conservation practices revolving loan fund, 11.20 to 11.22, 11.23(2),

11.24(1) to 11.24(5), Filed **ARC 5175B** 6/21/06**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Indigent defense services; attorney fee claims, 7.1, 12.4, 12.5(1), 12.5(2), 12.6(3)"a" and "b,"

14.3, 14.5(1)"b," Notice **ARC 5168B**, also Filed Emergency **ARC 5167B** 6/21/06

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Sale of goods and services by officials or employees of the utilities board, 1.6, 1.6(1) to 1.6(9),

Notice **ARC 5156B** 6/7/06Delegation of authority to issue procedural orders, 7.1(8), Notice **ARC 5172B** 6/21/06Accounting rules for local exchange utilities, 16.5, 16.9, Notice **ARC 5159B** 6/7/06**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Michael Connolly
2600 Renaissance Drive, #3
Dubuque, Iowa 52001

Senator Thomas Courtney
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Burlington, Iowa 52601

Senator John P. Kibbie
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Sonya Streit
Administrative Rules Coordinator
Governor's Ex Officio Representative
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Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ADMINISTRATIVE SERVICES DEPARTMENT[11]		
Procurement of goods and services, 105.15 IAB 6/7/06 ARC 5137B	Conference Room 4, Level A Hoover State Office Bldg. Des Moines, Iowa	June 27, 2006 10 a.m.
DEAF SERVICES DIVISION[429]		
Standing committees, 1.3(5) IAB 6/7/06 ARC 5152B	Room 208, 2nd Floor Lucas State Office Bldg. Des Moines, Iowa	June 27, 2006 10:30 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
School nurse—statement of professional recognition (SPR), 14.140(11) IAB 6/7/06 ARC 5157B	Room 3 Southwest, 3rd Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2006 1 p.m.
Special education endorsements, 15.3 to 15.20 IAB 6/7/06 ARC 5158B	Room 3 Southwest, 3rd Floor Grimes State Office Bldg. Des Moines, Iowa	June 27, 2006 1:30 p.m.
EDUCATION DEPARTMENT[281]		
Community college accreditation, ch 24 IAB 6/7/06 ARC 5135B	State Board Room Grimes State Office Bldg. Des Moines, Iowa	June 29, 2006 1 to 3:30 p.m.
School buses, amendments to ch 44 IAB 6/7/06 ARC 5136B	Airport Holiday Inn 6111 Fleur Dr. Des Moines, Iowa	July 20, 2006 1 to 2:30 p.m.
ELDER AFFAIRS DEPARTMENT[321]		
Area agencies on aging— board of directors, 6.7 to 6.17 IAB 6/7/06 ARC 5138B (ICN Network)	State Library, 3rd Floor Miller State Office Bldg. Des Moines, Iowa	June 28, 2006 1:30 p.m.
	Room 106, NIACC 500 College Dr. Mason City, Iowa	June 28, 2006 1:30 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	June 28, 2006 1:30 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	June 28, 2006 1:30 p.m.
	High School 800 E. Third St. Spencer, Iowa	June 28, 2006 1:30 p.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)
(ICN Network)

AEA 3601 West Avenue Rd. Burlington, Iowa	June 28, 2006 1:30 p.m.
Community School 2300 Chaney Dubuque, Iowa	June 28, 2006 1:30 p.m.
Public Library 400 Willow Ave. Council Bluffs, Iowa	June 28, 2006 1:30 p.m.
Gibson Public Library 200 W. Howard St. Creston, Iowa	June 28, 2006 1:30 p.m.
Bldg. 14, Indian Hills Comm. College 626 Indian Hills Dr. Ottumwa, Iowa	June 28, 2006 1:30 p.m.
Room 119, Kimberly Center 1002 W. Kimberly Davenport, Iowa	June 28, 2006 1:30 p.m.
West High School Baltimore and Ridgeway Waterloo, Iowa	June 28, 2006 1:30 p.m.
High School 100 E. Claiborne Dr. Decorah, Iowa	June 28, 2006 1:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.1, 22.4, 22.6, ch 33 IAB 6/7/06 ARC 5154B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 10, 2006 1 p.m.
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INSURANCE DIVISION[191]

Unfair trade practices, 15.8(4), 15.68 to 15.73 IAB 6/21/06 ARC 5173B	Utilities Division Hearing Room 330 Maple St. Des Moines, Iowa	July 11, 2006 10 a.m.
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NATURAL RESOURCE COMMISSION[571]

Waubonsie state park—cabin rental fee, 61.5(1)“a” IAB 6/7/06 ARC 5141B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 27, 2006 1 p.m.
Wild turkey fall hunting, 99.1, 99.10, 9.11(8), 99.12 IAB 6/7/06 ARC 5146B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 27, 2006 9 a.m.
Deer population management zone— penalty for violating regulations 105.3(6), 105.3(7) IAB 6/7/06 ARC 5142B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 27, 2006 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Infant metabolic screening for congenital and inherited disorders, 4.1 to 4.4 IAB 6/21/06 ARC 5178B	Public comment conference call: (515)281-3704 or (outside Des Moines) 1-800-528-5274 (For instructions, see ARC 5178B herein.)	July 11, 2006 9 to 10 a.m.
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STATE PUBLIC DEFENDER[493]

Indigent defense services; attorney fees, 7.1, 12.4 to 12.6, 14.3, 14.5(1) IAB 6/21/06 ARC 5168B (See also ARC 5167B herein.)	Conference Room 424 Lucas State Office Building Des Moines, Iowa	July 12, 2006 9 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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Soil Conservation Division[27]

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AUDITOR OF STATE[81]

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Real Estate Appraiser Examining Board[193F]

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PUBLIC EMPLOYMENT RELATIONS BOARD[621]
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ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR COMMENCING JULY 1, 2006, AND ENDING JUNE 30, 2007

In accordance with Iowa Code section 618.11, the Iowa Department of Administrative Services hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2006, and ending on June 30, 2007, in the following amounts:

*Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 39.9 cents
Each subsequent insertion = 27.1 cents

The rate becomes effective on July 1, 2006. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 3.4% from March 2005 to March 2006. The March index was the most recent index available as of May 24, 2006, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to either of the following individuals:

Lorrie Tritch, ITE Infrastructure/
Printing Administrator
Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-Mail: Lorrie.Tritch@iowa.gov

Lise Melton, State Printing Manager
Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-5050
E-Mail: Lise.Melton@iowa.gov

ARC 5161B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2006 Iowa Acts, House File 2754, section 34, the Iowa Department of Economic Development

hereby gives Notice of Intended Action to adopt new Chapter 311, "Renewable Fuel Infrastructure Board—Organization," Chapter 312, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," and Chapter 313, "Renewable Fuel Infrastructure Program for Biodiesel Terminal Facilities," Iowa Administrative Code.

The proposed new rules describe the structure of the Renewable Fuel Infrastructure Board and establish application procedures for the Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites and the Renewable Fuel Infrastructure Program for Biodiesel Terminal Facilities.

Section 34 of House File 2754 directs the Department to simultaneously adopt emergency rules and submit proposed rules no later than June 1, 2006, to implement the provisions of Division III, Renewable Fuel Infrastructure Programs. The legislation passed by the General Assembly mandated that the Department adopt emergency administrative rules with an effective date no later than June 1, 2006, and also submit a Notice of Intended Action at the same time. On May 18, 2006, when the Board adopted the emergency rules and initiated this Notice of Intended Action, such approval was contingent upon signature of the bill by the Governor. The Governor signed House File 2754 on May 30, 2006.

As of June 1, 2006, members had not yet been appointed to the new Renewable Fuel Infrastructure Board. The new Board may want to hold a public hearing about the proposed rules. In that event, the date, time and location of the public hearing will be established, published as an Amended Notice of Intended Action, and posted on the Department's Web site.

Public comments concerning the proposed new chapters will be accepted until July 25, 2006. Interested persons may submit written or oral comments by contacting Ken Boyd, Business Finance Manager, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4810.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 5160B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2006 Iowa Acts, House File 2754, sections 28 to 34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5173B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 507B and 2006 Iowa Acts, Senate File 2365, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The rules in Chapter 15 describe certain minimum standards and guidelines of conduct by identifying unfair meth-

INSURANCE DIVISION[191](cont'd)

ods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B. The proposed new rules set forth standards and procedures for recommendations made to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. Iowa insurance companies and producers shall comply with the rules beginning January 1, 2007.

Any interested person may make written suggestions or comments on these proposed amendments on or before July 11, 2006. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on July 11, 2006, at 10 a.m. in the Utilities Division Hearing Room, Iowa Insurance Division, 330 Maple St., Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 507B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 15.8(4) as follows:

15.8(4) Suitability. A producer shall not recommend to any person the purchase, sale or exchange of any life insurance policy, ~~annuity~~ or any rider, endorsement or amendment thereto, without reasonable grounds to believe that the transaction or recommendation is ~~not unsuitable~~ *suitable* for the person based upon reasonable inquiry concerning the person's insurance objectives, financial situation and needs, age and other relevant information known by the producer. For purposes of this subrule, when a producer recommends a group life insurance policy or ~~annuity~~, "person" shall refer to the intended group policyowner.

ITEM 2. Amend 191—Chapter 15 by adopting the following new rules:

DIVISION V

SUITABILITY IN ANNUITY TRANSACTIONS

191—15.68(507B) Purpose. The purpose of these rules is to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. The rules in this division apply to all annuities not exempted under rule 15.69(507B) that are issued on or after January 1, 2007.

191—15.69(507B) Applicability and scope.

15.69(1) These rules shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or by an insurer where no producer is in-

involved, that results in the purchase or exchange recommended.

15.69(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

a. Direct-response solicitations where there is no recommendation based on information collected from the consumer.

b. Contracts used to fund the following:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC) if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the IRC;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(5) Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(6) Formal prepaid funeral contracts.

191—15.70(507B) Definitions. For purposes of this division:

"Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

191—15.71(507B) Duties of insurers and of insurance producers.

15.71(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

15.71(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- a. The consumer's financial status;
- b. The consumer's tax status;
- c. The consumer's investment objectives; and

d. Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

15.71(3) An insurer or insurance producer's recommendation shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation. However, neither an insurance produc-

INSURANCE DIVISION[191](cont'd)

er, nor an insurer where no producer is involved, shall have any obligation to a consumer under subrule 15.71(1) related to any recommendation if a consumer:

a. Refuses to provide relevant information requested by the insurer or insurance producer;

b. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

c. Fails to provide complete or accurate information.

15.71(4) Establishment and maintenance of a system of supervision.

a. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with 15.71(4)“c” to “e,” or shall establish and maintain such a system including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

b. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

c. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by 15.71(4)“a” with respect to insurance producers under contract with or employed by the third party.

d. An insurer shall make reasonable inquiry to assure that the third party contracting under 15.71(4)“c” is performing the functions required under 15.71(4)“a” and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(1) Annually obtain a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(2) Based on reasonable selection criteria, periodically select third parties contracting under 15.71(4)“c” for a review to determine whether the third parties are performing the required functions. In conducting the review, the insurer shall perform those procedures that are reasonable under the circumstances.

e. An insurer that contracts with a third party pursuant to 15.71(4)“c” and that complies with the requirements to supervise in 15.71(4)“d” shall have fulfilled its responsibilities under 15.71(4)“a.”

f. An insurer, general agent or independent agency is not required by 15.71(4)“a” or “b” to:

(1) Review, or provide for review of, all insurance producer solicited transactions; or

(2) Include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

g. A general agent or independent agency contracting with an insurer pursuant to 15.71(4)“c” shall promptly, when

requested by the insurer pursuant to 15.71(4)“c,” give a certification as described in 15.71(4)“d” or give a clear statement that the general agent or independent agency is unable to meet the certification criteria.

h. No person may provide a certification under 15.71(4)“d”(1) unless:

(1) The person is a senior manager with responsibility for the delegated functions; and

(2) The person has a reasonable basis for making the certification.

15.71(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this rule for the recommendation of variable annuities. However, nothing in this subrule shall limit the insurance commissioner’s ability to enforce the provisions of this rule.

191—15.72(507B) Mitigation of responsibility.

15.72(1) The commissioner may order:

a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer’s, or by its insurance producer’s, violation of the rules of this division;

b. An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of the rules of this division; and

c. A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of the rules of this division.

15.72(2) Any applicable penalty under Iowa Code chapter 507B for a violation of the rules in Division V of this chapter may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

191—15.73(507B) Record keeping.

15.73(1) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

15.73(2) Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

ARC 5178B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 135.11 and 136A.8, the Department of Public Health hereby gives

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Notice of Intended Action to amend Chapter 4, "Center for Congenital and Inherited Disorders," Iowa Administrative Code.

These proposed amendments provide an increase in the newborn metabolic screening fee, provide a statement about the Center for Congenital and Inherited Disorders' relationship with the state Title V Maternal Child Health program, and make technical changes to provide consistency in reporting requirements for the programs.

Item 1 adds a statement indicating the center's relationship with the state Title V Maternal Child Health program.

Item 2 adds the pulmonology division to the list of divisions in the definition of "follow-up program."

Item 3 deletes the listing of tests in the screening panel and replaces it with text inclusive of the current and future tests on the panel.

Item 4 modifies the text to indicate who should receive the waiver forms.

Item 5 adds a statement to explain the screening process for infants transferred out of state.

Item 6 indicates the proper sequence for providing notification of presumptive positive test results.

Items 7, 8, and 12 modify the due dates and content of the program reports and make technical amendments.

Item 9 deletes the reference to Early ACCESS, modifies the listing of agencies that may request information on newborn test results, includes a statement regarding confidentiality regulations, and modifies text to indicate who is responsible for obtaining parental consent for research purposes.

Item 10 modifies text to indicate who is responsible for obtaining parental consent for release of identifiable specimens or records.

Item 11 updates the process for determination of the testing fee for the Iowa Neonatal Metabolic Screening program and increases the fee.

Item 13 rescinds paragraph "g," which is a duplication of paragraph "f" of subrule 4.4(4).

Item 14 updates the process for determination of the testing fee for the Maternal Serum Alpha-Fetoprotein/Quad Screen program.

Any interested person may make written comments or suggestions on the proposed amendments on or before July 11, 2006. Such written comments should be directed to Kim Piper, State Genetics Coordinator, Center for Congenital and Inherited Disorders, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kpiper@idph.state.ia.us.

A conference call to receive public comment will be held on July 11, 2006, from 9 to 10 a.m. Those wishing to participate in the conference call at any point during that time may dial (515)281-3704, or outside Des Moines may dial 1-800-528-5274, then, after the tone, enter pass code 5467, followed by the pound sign (#). If problems occur, please contact Patrick Goebel at (515)281-3826.

During the call, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to participate in the public comment conference call and who may require special accommodations, such as those for hearing impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 136A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 641—4.1(80GA,HF2362), as follows:

641—4.1(80GA,HF2362) Program explanation. The center for congenital and inherited disorders within the department of public health provides administrative oversight to the following: Iowa neonatal metabolic screening program, expanded maternal serum alpha-fetoprotein screening program, regional genetic consultation service, neuromuscular and related genetic disease program and Iowa registry for congenital and inherited disorders. The center for congenital and inherited disorders advisory committee represents the interests of the people of Iowa and assists in the development of programs that ensure the availability of and access to quality genetic health care services by all residents. The committee advises the director of the department of public health regarding issues related to genetics and hereditary and congenital disorders and makes recommendations about the design and implementation of the center's programs. Committee membership is made up of representatives of professional groups, agencies, legislators, consumers and individuals with an interest in promoting genetic services for the residents of Iowa. *The center for congenital and inherited disorders has an association with the state Title V maternal child health program to promote comprehensive services for women, infants and children.*

ITEM 2. Amend rule 641—4.2(80GA,HF2362), definition of "follow-up program," as follows:

"Follow-up program" means the designated individuals from the divisions of endocrinology, hematology, *pulmonology* and medical genetics of the department of pediatrics of the University of Iowa.

ITEM 3. Amend subrule 4.3(1), paragraph "a," as follows:

a. All newborns and infants born in the state of Iowa shall be screened for ~~medium chain acyl Co-A dehydrogenase deficiency, phenylketonuria, and other amino acid, organic acid, and fatty oxidation disorders detectable by tandem mass spectrometry; hypothyroidism; galactosemia; hemoglobinopathies; congenital adrenal hyperplasia; and biotinidase deficiency.~~ *all congenital and inherited disorders specified by the center and approved by the state board of health.*

ITEM 4. Amend subrule 4.3(2), paragraph "b," as follows:

b. Waiver. Should a parent or guardian refuse the screening, said refusal shall be documented in writing on the Iowa neonatal metabolic screening program waiver for newborn screening refusal form. The parent or guardian and licensed attending health care provider shall sign the waiver. The birthing hospital, birth center, or attending health care provider shall provide the ~~Iowa neonatal metabolic screening program~~ *central laboratory* with a copy of the waiver within six days of the refusal. The original copy of the waiver shall become a part of the infant's medical record.

ITEM 5. Amend subrule 4.3(2), paragraph "c," by adding **new** subparagraph (4) as follows:

(4) The blood spot sample of an infant transferred after birth to an out-of-state hospital shall be collected and sent to the central laboratory by the receiving hospital prior to the infant's discharge.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 6. Amend subrule **4.3(2)**, paragraph **"f,"** as follows:

f. Reporting of presumptive positive test results. A presumptive positive test result shall be reported within 24 hours to the consulting physician, or the physician's designee, who shall then notify the attending health care provider and the birthing hospital, birth center, or drawing laboratory. This initial report shall be followed by a written report to the attending health care provider and the birthing hospital, birth center, or drawing laboratory *and, subsequently, to the attending health care provider.*

ITEM 7. Amend subrule **4.3(5)**, paragraphs **"h"** and **"i,"** as follows:

h. ~~Submit a proposed budget and narrative for the upcoming fiscal year on or before March 31 of each year. Central laboratory shall submit a written annual report to the center by July 15 of each year. Submit a written annual report of the previous calendar year to the center by March 31 of each year.~~ This report shall include:

- (1) Number of infants screened,
- (2) Number of repeat screens,
- (3) Number of presumptive positive results by disorder,
- (4) Number of rejected specimens,
- (5) Number of waivers,
- (6) Results of quality assurance testing including any updates to the INMSP quality assurance policies, *and*
- (7) Screening and educational activity details, *and*
- (8) ~~A fiscal expenditures report.~~

i. *In collaboration with the program consulting physicians, submit a proposed budget and narrative justification for the upcoming state fiscal year by March 31 of each year.*

j. Act as fiscal agent for program expenditures encompassing the analytical, technical, administrative, educational, and follow-up costs for the screening program.

k. *Submit a fiscal expenditures report to the center within 90 days after the end of the state fiscal year.*

ITEM 8. Amend subrule **4.3(6)** as follows:

4.3(6) Follow-up program responsibility. Under the direction of consulting physicians, metabolic, endocrine, *pulmonary* and hemoglobinopathy follow-up programs shall be available for all individuals identified by the metabolic screening *as affected*.

a. The follow-up activities shall include consultation, treatment when indicated, case management, education and quality assurance.

b. ~~The follow-up programs shall submit an INMSP proposed budget and narrative for the next fiscal year by March 31 of each year. Follow-up programs shall submit metabolic screening data to the center by July 15 of each year. Submit a written annual report of the previous calendar year by March 31 of each year. The information report shall include:~~

- (1) The number of presumptive positive results and confirmed positive results by disorder,
- (2) Each individual's age at confirmation of disorder,
- (3) Each individual's age when treatment began,
- (4) Type of treatment for each disorder, *and*
- (5) A written summary of educational and follow-up activities, *and*
- (6) ~~A fiscal expenditure report for the fiscal year.~~

c. *In collaboration with the central laboratory, the follow-up programs shall submit a proposed budget and narrative justification for the upcoming fiscal year to the center by March 31 of each year.*

d. *The follow-up programs shall submit a fiscal expenditures report to the center within 90 days of the end of the state fiscal year.*

e. The consulting physician will oversee the respective follow-up programs.

ITEM 9. Amend subrule **4.3(7)**, paragraph **"b,"** as follows:

Rescind subparagraphs (3) and (5) and renumber subparagraphs (4) and (6) as (3) and (4), respectively.

Amend renumbered subparagraphs (3) and (4) as follows:

(3) A representative of a *state or* federal agency, to the extent that the information is necessary to perform a legally authorized function of that agency or the department. ~~The information provided shall not include the personal identifiers of an infant or child. The state or federal agency will be subject to confidentiality regulations which are the same as or more stringent than those in the state of Iowa.~~

(4) A researcher, upon documentation of parental consent *obtained by the researcher*, and only to the extent that the information is necessary to perform research authorized by the department and the state board of health.

ITEM 10. Amend subrule **4.3(8)**, paragraph **"b,"** subparagraph (3), as follows:

(3) Personally identifiable residual specimens or records shall not be disclosed without documentation of informed parental consent *obtained by the researcher*.

ITEM 11. Amend subrule **4.3(9)** as follows:

Rescind paragraph **"a"** and reletter paragraphs **"b"** to **"d"** as **"a"** to **"c."**

Amend relettered paragraph **"a"** as follows:

a. The department shall annually review and determine the fee to be charged for all activities associated with the INMSP. The review and fee determination shall be completed at least one month prior to the beginning of the fiscal year. The neonatal metabolic screening fee is ~~\$77~~ \$97.

ITEM 12. Amend subrule **4.4(3)** as follows:

4.4(3) Consulting physician responsibility. A consulting physician shall be designated by the center in collaboration with the central laboratory to provide interpretation of test results and consultation to the submitting health care provider. This physician shall provide consultation for abnormal test results, assist with questions about management of identified cases, provide education and assist with quality assurance measures. The screening program with assistance from the consulting physician shall submit to the center annual reports detailing program activities.:

a. *In collaboration with the central laboratory, submit a proposed budget and narrative justification for the upcoming calendar year to the center by March 31 of each year, and*

b. *Submit a written annual report of the previous fiscal year to the center by March 31 of each year. The report shall include:*

- (1) Number of women screened,
- (2) Number of repeat screens,
- (3) Number of abnormal results by disorder,
- (4) Number of rejected specimens,
- (5) Results of quality assurance testing, *and*
- (6) Screening and educational activity details.

ITEM 13. Amend subrule **4.4(4)** by rescinding paragraph **"g."**

ITEM 14. Rescind subrule **4.4(5)** and adopt the following new subrule in lieu thereof:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

4.4(5) Iowa expanded MSAFP/Quad Screen fee determination. The department shall annually review and determine the fee to be charged for all activities associated with the MSAFP/Quad Screen. The review and determination of the fee shall be completed at least one month prior to the beginning of the fiscal year.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, "Administration," Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," Chapter 45, "Partnerships," Chapter 46, "Withholding," Chapter 48, "Composite Returns," Chapter 49, "Estimated Income Tax for Individuals," Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 54, "Allocation and Apportionment," Chapter 56, "Estimated Tax for Corporations," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Chapter 59, "Determination of Net Income," Chapter 61, "Estimated Tax for Financial Institutions," Chapter 86, "Inheritance Tax," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

These amendments clarify existing rules and remove obsolete rules or rule provisions.

Item 1 amends subrule 38.1(2) to clarify that the definition of "computed tax" is the amount of tax before other credits in addition to the personal exemption credit.

Item 2 amends subrule 38.2(2) to remove obsolete provisions relating to waivers of the statute of limitations for waivers entered into prior to July 1, 1989.

Item 3 amends subrule 38.13(1) to correct a cross reference.

Item 4 amends subrule 39.1(3) to update the net income limitation for part-year residents of Iowa claimed as a dependent on another person's return for tax periods beginning on or after January 1, 2001.

Item 5 amends subrule 39.1(7) to update the list of refundable individual income tax credits.

Item 6 amends subrule 39.2(4) to update the cross references to Iowa Code sections relating to tax credits.

Item 7 amends subrule 39.5(10) to update the net income limitations for an individual claimed as a dependent on another person's return for tax periods beginning on or after January 1, 2001, and to remove obsolete provisions in this subrule relating to individuals other than single taxpayers.

Item 8 amends subrule 39.5(11) to update the net income limitations for an individual claimed as a dependent on another person's return for tax periods beginning on or after January 1, 2001, and to remove obsolete provisions in this subrule relating to single taxpayers.

Item 9 amends subrule 39.6(3) to clarify that the Iowa alternative minimum tax net operating loss should be computed by including the amount of both tax preferences and adjustments.

Item 10 amends subrule 39.7(1) to update the exemption amounts for purposes of computing the tax on lump-sum distributions.

Item 11 amends rule 701—39.9(422) to clarify that the special tax computation is not allowed for taxpayers who are required to annualize their income.

Item 12 amends rule 701—40.9(422) to update the applicable dates for the work opportunity credit.

Item 13 amends rule 701—40.15(422) to update the amount of expensing allowed under Section 179 of the Internal Revenue Code.

Item 14 amends subrule 40.16(1) to update the net income limitations for nonresidents to be exempt from Iowa income tax.

Item 15 amends subrule 40.16(2) to provide that nonresidents who earn compensation from a railway company or motor carrier in Iowa and other states are not required to include this compensation as income earned in Iowa.

Item 16 amends subrule 40.16(9) to correct a cross reference.

Item 17 amends rule 701—40.31(422) to update the percentage of expenses related to meals to be deducted by state legislators for tax years beginning on or after January 1, 1994.

Items 18, 21, 22, 23 and 24 amend rule 701—40.38(422) to clarify that the capital gain deduction can be allowed for an estate or trust in situations where the capital gain flows through to individual owners of the estate or trust, and to add an example.

Items 19 and 20 amend subrule 40.38(1) to eliminate a cross reference and add an example regarding material participation for rental activities relating to the Iowa capital gains deduction.

Item 25 amends subrule 40.42(3) to correct a cross reference to an Iowa Code section.

Item 26 amends subrule 40.45(11) to correct a cross reference to another rule.

Item 27 amends rule 701—40.48(422) to clarify the deduction for premiums for long-term health insurance for nursing home coverage and to include an example.

Item 28 amends subrule 40.53(1) to indicate that rollover contributions from other states' educational savings plans will qualify for the Iowa deduction for contributions to the Iowa educational savings plan, subject to the maximum amount allowable.

Items 29 through 32 amend subrules 41.5(3), 41.5(4) and 41.5(8) to correct cross references to Iowa Code sections.

Item 33 amends subrule 42.2(1) to clarify that the personal exemption credits shall be deducted from the computed tax and to correct a cross reference to another rule.

Item 34 amends subrule 42.4(1) to clarify that the out-of-state tax credit is allowed to resident taxpayers who file as part of a composite return in another state.

Item 35 amends rule 701—42.6(422) to clarify that limited liability companies qualify for the motor fuel credit and to correct a cross reference.

Item 36 amends subrule 42.7(1) to clarify that the out-of-state tax credit is allowed to resident taxpayers who pay minimum tax as part of a composite return in another state.

Item 37 amends rule 701—42.8(422) to clarify that there is no distinction between "deferral items" and "exclusion items" for purposes of the Iowa alternative minimum tax credit for tax periods beginning on or after January 1, 1993.

REVENUE DEPARTMENT[701](cont'd)

Item 38 amends rule 701—42.23(422) to update the listing regarding the sequence of tax credits to be deducted.

Item 39 amends rule 701—45.4(422) to update a cross reference to an Iowa Code chapter.

Item 40 amends subrule 46.3(1) regarding employer registration for withholding tax to account for situations in which an employer is remitting Iowa withholding tax but is not properly registered with the Department. This amendment is necessary due to the electronic filing of withholding tax returns and payments that began on January 1, 2005.

Item 41 amends rule 701—48.2(422) to clarify that limited liability companies may file composite returns.

Item 42 amends rule 701—48.6(422) to eliminate references to Iowa Code subsections.

Item 43 amends subrule 49.5(2) to include a cross reference to another subrule.

Item 44 amends subrule 49.7(3) to correct a cross reference to an Iowa Code section.

Item 45 amends rule 701—50.1(422) to clarify that estates and trusts that are shareholders in S corporations cannot take advantage of the apportionment provisions of this chapter.

Item 46 amends subrule 52.1(4) to correct an example.

Items 47 and 48 amend subrules 52.3(2) and 52.3(3) to update the information needed to be reported on Iowa corporation income tax returns for both domestic and foreign corporations.

Item 49 amends rule 701—52.6(422) to correct a cross reference.

Item 50 amends rule 701—52.12(422) to update the listing regarding the sequence of tax credits to be deducted.

Item 51 amends subrule 54.2(3) to correct a cross reference to a section of the Internal Revenue Code.

Item 52 amends subrule 54.6(5) to clarify an example.

Item 53 amends subrule 56.5(1) to add a reference to an Iowa tax form and to add an example regarding the underpayment of estimated tax penalty for corporation income tax.

Item 54 amends subrule 56.5(2) to remove obsolete provisions regarding the underpayment of estimated tax penalty for corporation income tax.

Item 55 amends subrule 56.6(4) to correct a cross reference to an Iowa Code section.

Item 56 amends subrule 58.3(2) to update the information needed to be reported on Iowa franchise tax returns.

Item 57 amends subrule 58.5(2) to eliminate a cross reference to a section of the Internal Revenue Code which has been repealed.

Item 58 amends rule 701—59.1(422) to update a cross reference to another rule.

Item 59 amends rule 701—59.12(422) to correct a cross reference to another Iowa Code section.

Item 60 amends subrule 61.5(1) to add a reference to an Iowa tax form and to add an example regarding the underpayment of estimated tax penalty for franchise tax.

Item 61 amends subrule 61.5(2) to remove obsolete provisions regarding the underpayment of estimated tax penalty for franchise tax.

Item 62 amends subrule 61.6(4) to correct a cross reference to another Iowa Code section.

Items 63, 64 and 65 amend subrules 86.1(1), 86.5(12) and 86.8(2) to correct cross references to Iowa Code sections.

Items 66 and 67 amend subrules 89.2(1) and 89.4(9) to correct cross references to other rules.

Item 68 amends subrule 89.8(2) to correct a cross reference to an Iowa Code section.

Items 69, 70 and 72 amend subrule 89.8(7) to correct cross references to other rules.

Item 71 amends subrule 89.8(7) to clarify that interest income from certain Iowa bonds other than Iowa board of regents bonds is excluded from Iowa fiduciary income tax.

Item 73 amends subrule 89.8(7), paragraph “m,” to clarify that capital gain from Internal Revenue Code Section 641(c) gains is only included in Iowa fiduciary taxable income for sales or exchanges before August 6, 1997.

Item 74 amends subrule 89.8(7) to correct a cross reference to an Iowa Code section.

Item 75 amends subrule 89.8(7), paragraph “t,” also to clarify the treatment of interest income from certain Iowa bonds and capital gain income from Internal Revenue Code Section 641(c) gains discussed in Items 71 and 73. In addition, a correction was made to a cross reference to another rule.

Item 76 amends subrule 89.8(8) to correct a cross reference to another rule.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than July 24, 2006, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before July 11, 2006. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by July 14, 2006.

These amendments are intended to implement Iowa Code chapter 422.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 38.1(2) as follows:

38.1(2) The term “computed tax” means the amount of tax remaining before deductions of *the* personal exemption ~~and credit for dependents and other credits in Iowa Code chapter 422, division II,~~ and before the computation of the school district surtax *and the emergency medical services income surtax.*

REVENUE DEPARTMENT[701](cont'd)

ITEM 2. Amend subrule 38.2(2) as follows:

38.2(2) Waiver of statute of limitations. If *When* the taxpayer files with *and* the department a request to waive *enter into an agreement to extend* the period of limitation, ~~the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of 36 months' interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement interest continues to accrue on any deficiency or overpayment during the period of the waiver. The taxpayer may claim a refund during the period of the waiver.~~

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment.

The limitation of 36 months of interest described above does not apply to waiver of statute of limitations agreements where the extended periods start on or after July 1, 1989. In the case of these agreements, interest accrues through the extended periods.

ITEM 3. Amend subrule 38.13(1), introductory paragraph, as follows:

38.13(1) Reciprocal tax agreement with Illinois. Pursuant to the authority of Iowa Code subsection 422.8(2 5), the department of revenue entered into a reciprocal tax agreement with tax administration officials of Illinois in November 1972 which went into effect for taxable years which began after December 31, 1972. The Iowa-Illinois reciprocal tax agreement cannot be terminated by the Iowa department of revenue unless the termination is authorized by a constitutional majority of each house of the general assembly and is approved by the governor. The Iowa-Illinois reciprocal tax agreement includes the following terms:

ITEM 4. Amend subrule **39.1(3)**, paragraph "a," as follows:

a. Tax years beginning on or after January 1, 1993. For each taxable year, every part-year resident of Iowa must make, sign, and file a return if the individual has a net income of \$1,000 or more from Iowa sources and meets one or more of the following conditions: (1) has a net income from all sources that is greater than \$13,500 in the case of married persons filing jointly, filing separately on a combined return form or filing separate returns, unmarried heads of household and surviving spouses, (2) has a net income from all sources that is greater than \$9,000 in the case of a single person, or (3) is claimed as a dependent on another person's return and had a net income from all sources of \$4,000 or more *or has a net income from all sources of \$5,000 or more if the tax year begins on or after January 1, 2001.* For purposes of this paragraph, the portion of a lump-sum distribution that is allocable to Iowa is included in net income to determine if the person has sufficient net income to make and file a return.

ITEM 5. Amend subrule 39.1(7) as follows:

39.1(7) Returns filed for refund. A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimate *estimated* tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, *the early childhood development tax credit*, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accor-

dance with rule 701—38.18(422)), the assistive device credit, the historic preservation and cultural and entertainment district tax credit, the ethanol blended gasoline tax credit, and the investment tax credit for value-added agricultural products or biotechnology-related processes, *the soy-based cutting tool oil tax credit, and the wage-benefit tax credit.*

ITEM 6. Amend subrule **39.2(4)**, second unnumbered paragraph, as follows:

To determine whether or not at least 90 percent of the tax was "paid" on or before the due date, the aggregate amount of tax credits applicable on the return plus the tax payments made on or before the due date are divided by the tax required to be shown due on the return. The tax required to be shown on the return is the sum of the income tax, lump-sum tax, minimum tax, and school district income surtax, *and the emergency medical services income surtax.* The tax credits applicable are the credits set out in Iowa Code sections 422.5, 422.8, 422.10, 422.11 through 422.11L 422.11A, 422.11B, 422.11C, 422.12, 422.12B, 422.12C and 422.111. The tax payments to be considered for purposes of determining if 90 percent of the tax was paid are the withholding tax payments, estimate payments, and the payments made with the Iowa income tax voucher form to ensure that 90 percent of the tax was paid timely.

ITEM 7. Amend subrule 39.5(10) as follows:

39.5(10) ~~Eleven thousand five hundred dollar exemption and thirteen~~ *Thirteen* thousand five hundred dollar exemption. For tax years beginning on or after January 1, 1993, all taxpayers except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is \$13,500 or less ~~(\$11,500 or less for tax years beginning in the 1992 calendar year)~~, are exempt from paying Iowa individual income tax subject to the following conditions:

a. In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. However, in the case of married taxpayers where one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return form, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

b. An individual claimed as a dependent on another person's return with an income of at least \$3,000, *\$5,000 (\$4,000 for tax years beginning in 1993 but before 2001)* but not more than \$13,500 ~~(\$11,500 for tax years beginning in 1992)~~, will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed is filing as a single individual and has a net income of \$9,000 or less ~~(\$7,500 or less for tax years beginning in 1992)~~, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less ~~(\$11,500 or less for tax years beginning in 1992)~~.

(3) The person on whose return the dependent is claimed is filing as an unmarried head of household or as a surviving spouse and has a net income of \$13,500 or less ~~(\$11,500 or less for tax years beginning in 1992)~~.

c. If the payment of tax would reduce the net income to less than \$13,500 ~~(\$11,500 or less for tax years beginning in 1992)~~, the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of \$13,500 ~~(\$11,500 for tax years beginning in 1992)~~. For example *Example*: If a

REVENUE DEPARTMENT[701](cont'd)

taxpayer's net income was \$13,600 and the computed tax after personal exemptions and other credits was \$300, the payment of \$300 would reduce the income below \$13,500; therefore, the amount of tax is reduced to \$100 so the taxpayer can retain a net income of \$13,500.

ITEM 8. Amend subrule 39.5(11) as follows:

39.5(11) ~~Seven thousand five hundred dollar exemption and nine Nine thousand dollar exemption.~~ For tax years beginning on or after January 1, 1993, single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes is \$9,000 or less (~~\$7,500 or less for tax years beginning in the 1992 calendar year~~), are exempt from paying Iowa individual income tax subject to the following conditions:

a. An individual claimed as a dependent on another person's return with an income of at least ~~\$3,000~~ \$5,000 (~~\$4,000 for tax years beginning in 1993 but before 2001~~) but not more than \$9,000 (~~\$7,500 for tax years beginning in 1992~~) will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of \$9,000 or less (~~\$7,500 or less for tax years beginning in 1992~~), or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of \$13,500 or less (~~\$11,500 or less for tax years beginning in 1992~~).

(3) The person on whose return the dependent is claimed is filing as an unmarried head of household or as a surviving spouse and has a net income of \$13,500 or less (~~\$11,500 or less for tax years beginning in 1992~~).

b. If the payment of tax would reduce the net income to less than \$9,000 (~~\$7,500 for tax years beginning in 1992~~), the tax is reduced to an amount which will allow the taxpayer to retain a net income of \$9,000 (~~\$7,500 for tax years beginning in 1992~~).

ITEM 9. Amend subrule **39.6(3)**, paragraph "b," as follows:

b. Net operating loss computed for a year beginning after 1982 which is carried back or carried forward to the current taxable year. In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current tax year, the net operating loss shall be reduced by the amount of the items of tax preference preferences and adjustments arising in the current tax year.

ITEM 10. Amend subrule 39.7(1) as follows:

39.7(1) ~~Five Nine thousand dollar exemption (\$7,500 exemption for all taxpayers except single taxpayers for tax years beginning on or after January 1, 1987).~~ To be eligible for the \$5,000 \$9,000 or less exemption as provided in Iowa Code section 422.5, the total amount of a lump-sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump-sum distribution income) is less than \$5,000 \$9,000, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump-sum distributions and the computed tax may be limited to the amount of income tax that exceeds \$5,000 \$9,000 (including the lump-sum income). Example: If the net income including a lump-sum distribution was \$5,030 \$9,030 and the computed tax and lump-sum tax was \$50 after personal exemptions and out-of-state credit, the payment of \$50 tax would reduce the income below \$5,000 \$9,000; therefore, the amount of tax due is reduced to \$30 which enables the tax-

payer to retain a net income of \$5,000 \$9,000. ~~Note that for tax years beginning on or after January 1, 1987, the \$5,000 or less exemption is increased to \$7,500 or less for all taxpayers except single taxpayers described in subrule 39.4(1).~~

ITEM 11. Amend rule **701—39.9(422)**, last unnumbered paragraph, as follows:

The special tax computation for low-income taxpayers is not available to married taxpayers filing separate state returns or to married taxpayers filing separately on the combined return form in instances where one of the spouses has a net operating loss described in Iowa Code section 422.9, subsection 3, and the spouse elects to carry back or carry forward the net operating loss. *Also, the special tax computation for low-income taxpayers is not available if the taxpayer is required to annualize the taxpayer's income as described in rule 701—41.9(422).*

ITEM 12. Amend rule 701—40.9(422), introductory paragraph, as follows:

701—40.9(422) Targeted jobs tax credit, work opportunity tax credit, alcohol fuel credit. Where an individual claims the targeted jobs tax credit or the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol fuel credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The adjustment for the targeted jobs tax credit is applicable for the tax years beginning on or after January 1, 1977, and before January 1, 1996. The work opportunity tax credit applies to eligible individuals who begin work after September 30, 1996, and before July 1, 1998 January 1, 2006. The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

ITEM 13. Amend rule **701—40.15(422)**, numbered paragraph "1," as follows:

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$10,000 \$100,000 (*for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years*) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$10,000 \$100,000 (*for the tax year beginning on or after January 1, 2003*) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$5,000 \$50,000 (*for the tax year beginning on or after January 1, 2003*) that would have applied if the spouse had filed a separate federal return.

ITEM 14. Amend subrule 40.16(1) as follows:

40.16(1) Nonresidents exempt from paying tax. ~~Nonresidents whose net income as computed under Iowa Code section 422.7, plus the amount of a lump-sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is \$5,000 or less, including any in-~~

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come not allocated to Iowa, are exempt from paying individual income tax subject to the following conditions:

a.—Income of both husband and wife is considered in determining the exemption. The combined income regardless of filing status must be \$5,000 or less in order to qualify for the exemption.

b.—An individual claimed as a dependent on another person's return with an income of at least \$3,000, but no more than \$5,000, will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed has a net income of \$5,000 or less, or

(2) The combined income of the person and the person's spouse is \$5,000 or less.

If the payment of tax would reduce the net income to less than \$5,000, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of \$5,000. For example: If a taxpayer's net income is \$5,025, and the computed tax after personal exemption and out-of-state credit is \$45, the payment of the \$45 would reduce the net income below \$5,000; therefore, the amount of tax due is reduced to \$25 which enables the taxpayer to retain a net income of \$5,000. See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

~~This provision~~ These provisions for reducing tax in 701—subrule 39.5(10), paragraph "c," and 701—subrule 39.5(11), paragraph "b," does do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

ITEM 15. Amend subrule **40.16(2)**, sixth unnumbered paragraph, as follows:

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks (and similar modes of transportation), between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. *However, pursuant to the Amtrak Reauthorization and Improvement Act of 1990, nonresidents who earn compensation in Iowa and one or more other states for a railway company or for a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.*

ITEM 16. Amend subrule **40.16(9)**, paragraph "d," as follows:

d. Capital gains from sales or exchanges of interests in limited liability companies. Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or

exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "e b" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule.

ITEM 17. Amend rule **701—40.31(422)**, first unnumbered paragraph, as follows:

For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim a deduction for meals and lodging per "legislative day" the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 80 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

ITEM 18. Amend rule 701—40.38(422), introductory paragraph, as follows:

701—40.38(422) Capital gains deduction or exclusion for certain types of net capital gains. Effective for tax years beginning on or after January 1, 1990, but prior to January 1, 1998, a deduction is allowed in computing net income for 45 percent of the net capital gains described in subrules 40.38(1) to 40.38(4). See subrules 40.38(6) through 40.38(14) for the capital gain deduction or exclusion which is applicable for net capital gains received in tax years beginning on or after January 1, 1998. However, the aggregate net capital gains from subrules 40.38(1) through 40.38(4) which are to be considered for the tax year for the capital gain deduction cannot exceed \$17,500 for all individual taxpayers except married taxpayers filing separate state returns. In the case of married taxpayers filing separate returns, the aggregate net capital gains to be considered for the deduction cannot exceed \$8,750 per spouse. Married taxpayers filing separately on the combined return form shall prorate the \$17,500 capital gain deduction limitation between the spouses in the ratio of each spouse's net capital gains from subrules 40.38(1) to 40.38(4) to the total net capital gains of both spouses from subrules 40.38(1) to 40.38(4). ~~The capital gain deduction authorized in this rule does not apply to estates or trusts.~~ Effective for tax years beginning on or after January 1, 1994, the capital gain deduction is not allowed for purposes of computation of a net operating loss for the tax year and for purposes of computing the income for a tax year to which a net operating loss is carried. Subrule 40.38(5) includes information on how the capital gain deduction is treated in a tax year with a net operating loss and in a tax year with the capital gain deduction where a net operating loss deduction is carried.

ITEM 19. Amend subrule 40.38(1), introductory paragraph, as follows:

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40.38(1) Net capital gains from sales or exchanges of real property, tangible personal property, or other assets of a business owned by the taxpayer for a minimum of ten years and in which the taxpayer has materially participated for a minimum of ten years. Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction ~~on limited amounts of capital gains provided in subrule 40.38(2)~~. In the case of installment sales of real property, tangible personal property, or other assets of a business, where the selling price of the business assets is paid to the seller in one or more years after the year in which the sales transaction occurred, all installments received on or after January 1, 1990, qualify for the capital gains deduction ~~described in subrule 40.38(2)~~, assuming the taxpayers had met the ownership and material participation requirements at the time the sales transactions occurred. *Herbert Clausen and Sylvia Clausen v. the Iowa Department of Revenue and Finance, Law No. 32313, Crawford County District Court, May 24, 1995.* For example, if a taxpayer received an installment payment in 1996 from the sale of the taxpayer's farmland in 1988, the installment received in 1996 would qualify for the 45 percent capital gain deduction ~~provided in subrule 40.38(2)~~ if the taxpayer had owned the farmland at least ten years at the time of the sale and the taxpayer had materially participated in the farm business for a minimum of ten years at the time of the sale. The following terms and definitions clarify which sales and exchanges of assets of a business qualify for the capital gain deduction authorized in rule 701—40.38(422).

ITEM 20. Amend subrule **40.38(1)** by adding the following **new** example at the end of the subrule:

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1991 and has received rental income from these duplexes since 1991. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repair and other upkeep on the duplexes. However, no person spends more time in maintaining the duplexes than Mr. Stanley. The duplexes are sold in 2004, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2004 Iowa return since he met the material participation requirements for this rental activity.

ITEM 21. Amend subrule 40.38(6) as follows:

40.38(6) Exclusion of net capital gains from the sales of real property, from the sales of assets of a business entity, from the sales of certain livestock of a business, from the sales of timber, from liquidation of assets of certain corporations, and from certain stock sales which are treated as acquisition of assets of the corporation. For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(7) to 40.38(13) are excluded in the computation of net income for qualified individual taxpayers. Net capital gains means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. ~~This capital gain exclusion does not apply to estates and trusts.~~ Subrule 40.38(14) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

ITEM 22. Amend subrule **40.38(7)**, second unnumbered paragraph, as follows:

In situations in which real property was sold by a partnership, subchapter S corporation, ~~or~~ limited liability company, *estate, or trust* and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had owned and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

ITEM 23. Amend subrule **40.38(8)**, seventh unnumbered paragraph, as follows:

In situations in which substantially all the tangible personal property or service was sold by a partnership, subchapter S corporation, ~~or~~ limited liability company, *estate, or trust* and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had owned the business for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale.

ITEM 24. Amend subrule **40.38(8)** by adding the following **new** example at the end of the subrule:

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2002, Mr. Jackson transfers 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust is reported on Mr. Jackson's individual income tax return. In 2005, the assets of Jackson Products Corporation are sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

ITEM 25. Amend subrule 40.42(3) as follows:

40.42(3) For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code ~~subsection~~ *section* 427.1(4)-(27) "c."

ITEM 26. Amend subrule **40.45(1)**, paragraph "c," as follows:

c. The term "nonresident" applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.1(9) 38.17(2) for the definition of domicile.

ITEM 27. Amend rule **701—40.48(422)**, third unnumbered paragraph, as follows:

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance

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or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, *irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.*

ITEM 28. Amend subrule 40.53(1), introductory paragraph, as follows:

40.53(1) Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries. Effective with contributions made on or after July 1, 1998, an individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. *Rollover contributions from other states' educational savings plans will qualify for the deduction, subject to the maximum amount allowable.* Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount given or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the educational savings plan in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

ITEM 29. Amend subrule **41.5(3)**, paragraph "b," as follows:

b. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by a licensed agency under Iowa Code chapter 238, by an agency that meets the provision of the interstate compact in Iowa Code section 238.33 232.158 or by a person making an independent placement under Iowa Code chapter 600, which exceed 3 percent of the taxpayer's net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return. Adoption expenses paid or incurred prior to January 1,

1977, in connection with the adoption of a child, which exceed 3 percent of the taxpayer's net income, will be allowed only if the child was placed by a licensed agency under Iowa Code chapter 238 or by an agency that meets the provisions of the interstate compact in Iowa Code section 238.33 232.158.

ITEM 30. Amend subrule **41.5(4)**, paragraph "a," first unnumbered paragraph, as follows:

To qualify for the deduction, in addition to being disabled, the person must be the grandchild, child, parent or grandparent of the taxpayer or the taxpayer's spouse, and

(1) Be receiving medical assistance benefits under Iowa Code chapter 249A; or

(2) Be eligible to receive such benefits under the income and resource levels established in Iowa Code chapter 239A 239B; or

(3) Would be eligible to receive such benefits if living in a health-care facility licensed under Iowa Code chapter 135C.

ITEM 31. Amend subrule **41.5(4)**, paragraph "e," as follows:

e. In the event that the person being cared for is receiving assistance benefits under Iowa Code chapter 239 239B, the expenses qualifying for deduction shall be the net difference between the expenses actually incurred in caring for the person which are not otherwise deductible as a deduction to net income and the assistance benefits under Iowa Code chapter 239 239B. Iowa Code chapter 239 239B covers aid-to-dependent-children family investment program payments.

ITEM 32. Amend subrule 41.5(8) as follows:

41.5(8) Medical expense deduction limitation. For tax years beginning on or after January 1, 1996, to the extent that a taxpayer has a medical care expense deduction on the federal return under Section 213 of the Internal Revenue Code, the taxpayer must compute the medical care expense deduction on the Iowa return by excluding those health insurance premiums deducted in computing net income in accordance with Iowa Code subsection 422.7(32 29) and rule 701—40.48(422).

ITEM 33. Amend subrule **42.2(1)**, paragraphs "a," "b," "c," "f," and "g," as follows:

a. A single person ~~may~~ *shall* deduct from the computed tax a personal exemption credit of \$40. A single person is defined in 701—subrule 39.4(1).

b. A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, ~~may~~ *shall*, if a joint return is filed, deduct from the computed tax a personal exemption of \$80. Where such spouse files a separate return, each spouse is entitled to deduct from the computed tax a personal exemption of \$40. The personal exemption may not be divided between the spouses in any other proportion.

c. A taxpayer ~~may~~ *shall* deduct from computed tax an exemption of \$40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents ~~may~~ *shall* be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, the spouses ~~may~~ *must* elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the money credits for a particular dependent.

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f. A taxpayer who is blind as defined in Iowa Code section 422.12(5) (1) "e" is allowed ~~an additional~~ a personal exemption credit of \$20 in addition to any other credits allowed by this rule.

g. A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if the ~~resident nonresident~~ taxpayer or part-year taxpayer was a resident for the entire year.

ITEM 34. Amend subrule 42.4(1) by adding the following new unnumbered paragraphs at the end of the subrule:

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the income tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.4(2).

However, if the partnership, S corporation, limited liability company or trust is directly subject to tax in another state and the tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state purposes and a corporation income tax is imposed directly on the S corporation, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax paid to the other state.

ITEM 35. Amend rule 701—42.6(422) as follows:

701—42.6(422) Motor fuel credit. An individual, partnership, *limited liability company*, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, *limited liability company*, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax ~~deductible under Iowa Code section 422.52(4) as determined by 701—subrule 231.2(2).~~ The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

The motor fuel tax credits for fuel taxes paid by partnerships, *limited liability companies*, and S corporations are not claimed on returns filed for the partnerships, *limited liability companies*, and S corporations. Instead, the pro rata shares of the motor fuel tax credits are allocated to the partners, *members*, and shareholders in the same ratio as incomes are allocated to the partners, *members*, and shareholders. A schedule must be attached to the individual's returns showing the distribution of gallons and the amount of credit claimed by each ~~shareholder or partner, member, or shareholder.~~

The partnership, *limited liability company*, or S corporation must attach to its return a schedule showing the allocation to each partner, *member*, or shareholder of the motor fuel purchased by the ~~corporation or partnership, limited liability company, or S corporation~~ which qualifies for the credit.

ITEM 36. Amend subrule 42.7(1) by adding the following new unnumbered paragraphs at the end of the subrule:

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return and pays minimum tax in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the minimum tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.7(2).

However, if the partnership, S corporation, limited liability company, or trust is directly subject to minimum tax in another state and the minimum tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the minimum tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state purposes and a corporation income tax is imposed directly on the S corporation which includes minimum tax, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax, including minimum tax, paid to the other state.

ITEM 37. Amend rule 701—42.8(422), introductory paragraph, as follows:

701—42.8(422) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available and the credit is based on the minimum tax paid by the taxpayer for 1987. However, only the portion of the minimum tax which is attributable to those adjustments and tax preferences which are "deferral items" qualifies for the minimum tax credit *for tax years beginning before January 1, 1993.* "Deferral items" are those tax preferences and adjustments which result in a temporary change in an individual's tax liability. An example of a "deferral item" is the tax preference for accelerated depreciation of real property placed in service before 1987. On the other hand, the portion of the minimum tax which is attributable to the "exclusion item" for appreciated property charitable deduction does not qualify for the minimum tax credit. The appreciated property charitable deduction tax preference is the only state "exclusion item," although there are several "exclusion items" which are used to compute federal minimum tax. *For tax years beginning on or after January 1, 1993, the entire amount of minimum tax paid qualifies for the minimum tax credit, and there is no longer any distinction between "deferral items" and "exclusion items" for Iowa minimum tax purposes.* The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

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ITEM 38. Amend rule 701—42.23(422) as follows:

701—42.23(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.10 through 422.12C shall be deducted in the following sequence:

1. Personal exemption credits.
2. Tuition and textbook credit.
3. Iowa earned income credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. Venture capital credits.
8. Endow Iowa tax credit.
9. Investment tax credit.
10. ~~New jobs credit.~~ *Wind energy production tax credit.*
11. ~~Alternative minimum tax credit.~~ *Renewable energy tax credit.*
12. ~~Historic preservation and cultural and entertainment district tax credit.~~ *New jobs credit.*
13. ~~Ethanol blended gasoline tax credit.~~ *Economic development region revolving fund tax credit.*
14. ~~Research activities credit.~~ *Alternative minimum tax credit.*
15. ~~Assistive device credit.~~ *Historic preservation and cultural and entertainment district tax credit.*
16. ~~Motor fuel credit.~~ *Ethanol blended gasoline tax credit.*
17. ~~Claim of right credit (if elected in accordance with rule 701—38.18(422)).~~ *Research activities credit.*
18. ~~Estimated tax payments, payment with vouchers and withholding tax.~~ *Assistive device credit.*
19. *Out-of-state tax credit.*
20. *Child and dependent care credit or early childhood development tax credit.*
21. *Motor fuel credit.*
22. *Claim of right credit (if elected in accordance with rule 701—38.18(422)).*
23. *Wage-benefits tax credit.*
24. *Soy-based cutting tool oil tax credit.*
25. *Refundable portion of investment tax credit, as provided in subrule 42.2(10), paragraph "b."*
26. *Estimated payments, payment with vouchers and withholding tax.*

This rule is intended to implement Iowa Code sections 422.10, 422.11, 422.11A, 422.11B, 422.11C, 422.11D, 422.11E, 422.11F, 422.11G, 422.11H, 422.11I, 422.11J, 422.11K, 422.11L, 422.12, 422.12B and 422.12C.

ITEM 39. Amend rule 701—45.4(422), introductory paragraph, as follows:

701—45.4(422) Distribution and taxation of partnership income. A partnership as such is not taxable but the members of a partnership (including limited partnerships organized under Iowa Code chapter 487-488) are taxable (except as otherwise provided in 701—subrule 40.16(5) respecting nonresident members) upon their distributable shares of the net income of the partnership whether distributed to them the partners or not. If the result of the partnership operation is a net loss (i.e., excess of allowable deductions from gross income) the loss may be deducted by the partners (except as otherwise provided respecting nonresident members) in the same proportion that net income would have been taxable to the partners. If the partner reports income on the same taxable year basis as that of the partnership, the distributable share of the net income (or loss) of the partnership for the taxable year must be included in or deducted from gross income on the individual return for that year. If, however, the taxable year of

the partner is different from that of the partnership, distributable shares must be included in or the proportion of the loss deducted from gross income for the year in which the taxable year of the partnership ends.

ITEM 40. Amend subrule 46.3(1) as follows:

46.3(1) Employer registration. Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an "Iowa Business Tax Registration Form." The form shall indicate the employer's or payer's federal identification number. If an employer or payer has not received a federal employer's identification number, the department will issue a temporary identification number. The employer or payer must notify the department when the federal employer identification number is assigned.

When initial payment of wages subject to withholding tax occurs late in the calendar quarter, or before the employer's or payer's federal employer's identification number is assigned by the Internal Revenue Service, the Iowa business tax registration form shall be forwarded along with the first quarterly return. The responsible party(ies) shall be listed on the form.

If an employer deducts and withholds Iowa income tax but does not file the Iowa business tax registration form, the department may register the employer using the best information available. If an employer uses a service provider to report and remit Iowa withholding tax on behalf of the employer, the department may use information obtained from the service provider to register the employer if an Iowa business tax registration form is not filed. This information would include, but is not limited to, the name, address, federal employer's identification number, filing frequency, withholding agent and responsible party(ies) of the employer.

ITEM 41. Amend rule **701—48.2(422)**, definition of "taxpayer," as follows:

"Taxpayer" means a partnership, *limited liability company*, S corporation, professional athletic team, or trust which files a return and pays the tax on behalf of the nonresident partners, *members*, shareholders, employees, or beneficiaries.

ITEM 42. Amend rule **701—48.6(422)**, numbered paragraph "1," as follows:

1. Adjustments to federal income. For partnerships and trusts, make those adjustments to federal income set forth in Iowa Code section 422.7 ~~except subsections 4 to 8, 12 to 15, 17, and 19 to 21.~~ For S corporations, make those adjustments to federal income set forth in Iowa Code section 422.35.

ITEM 43. Amend subrule 49.5(2) as follows:

49.5(2) Nonresident forms. A special nonresident estimate tax form with instructions is available from the department for any nonresident wishing to make estimate tax payments in lieu of having Iowa income tax withheld by an Iowa withholding agent. *The estimated payment should be submitted with the certificate or the release from withholding described in subrule 49.3(2).*

ITEM 44. Amend subrule 49.7(3), introductory paragraph, as follows:

49.7(3) Estimated tax carryforward and how amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax if the taxpayer has tax liabilities or other liabilities.

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ties with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 421.17, subsection 21A, and 2003 Iowa Acts, House File 534, section 86 8A.504. These liabilities are for debts owed the state for public assistance overpayments, defaults on guaranteed student or parental college loans, district court debts, delinquent child support, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

ITEM 45. Amend rule 701—50.1(422) as follows:

701—50.1(422) Apportionment of income for resident shareholders of S corporations. For tax years beginning on or after January 1, 1996, and before January 1, 1998, resident shareholders of S corporations which are value-added corporations and which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1998, resident shareholders of all S corporations which carry on business within and without Iowa may, at their election, determine the S corporation income allocable to sources within Iowa by allocation and apportionment of the S corporation income. For tax years beginning on or after January 1, 1996, and before January 1, 1997, in order to take advantage of this provision, the taxpayers must first file their return reporting all income to Iowa and then file a refund claim based on allocation and apportionment. *Estates and trusts which are shareholders in S corporations cannot take advantage of these apportionment provisions.*

For tax years beginning on or after January 1, 1997, a shareholder in an S corporation which carries on business within and without Iowa which has elected to apportion income and then elects not to apportion income shall not reelect to apportion income for three tax years immediately following the first tax year in which the shareholder elected not to apportion income, unless the director of revenue and finance consents to the election.

This rule is intended to implement Iowa Code Supplement section 422.5, subsection 1, paragraph “j.”

ITEM 46. Amend subrule 52.1(4), Example 8, as follows:

EXAMPLE 8: H, a corporation with a commercial domicile in State X, has no physical presence in Iowa. H has entered into a contract with an independent contractor to solicit sales of G H's magazines in Iowa. The independent contractor does business in Iowa and receives payment for the magazines and deposits the funds in an Iowa bank for H's account. H earns interest on this account. Under these circumstances which are H's only contact with Iowa, H's interest-bearing account is an integral part of business activity in Iowa. Accordingly, H is required to file an Iowa income tax return and include the interest income in the numerator of the business activity formula.

ITEM 47. Amend subrule 52.3(2), second and third unnumbered paragraphs, as follows:

If a domestic corporation claims a foreign tax credit, ~~investment research activities credit, alcohol fuel credit, employer social security credit, or work incentive opportunity credit~~ on its federal income tax return, a detailed computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income

tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax, ~~or an alternative minimum tax, or tax from recomputing a prior year's investment credit~~, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

ITEM 48. Amend subrule 52.3(3) as follows:

52.3(3) Form for filing—foreign corporations. Foreign corporations, as defined by Iowa Code subsection 422.32(6), must include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this *return* includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, ~~investment credit computation and recapture research activities credit computation, work incentive opportunity credit computation, foreign tax credit computation, alcohol fuel credit computation, employer social security credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.~~

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

- a. Capital gains.
- b. ~~Investment credit computation~~ Dividend income and special deductions.
- c. ~~Investment credit recapture~~ Research activities credit, alcohol fuel credit and employer social security credit computations.
- d. Work incentive opportunity credit computation.
- e. Foreign tax credit computation.
- f. Holding company tax computation.
- g. ~~Minimum~~ Alternative minimum tax computation.
- h. Schedules detailing other income and other deductions.

ITEM 49. Amend rule 701—52.6(422), first unnumbered paragraph, as follows:

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax deductible under Iowa Code subsection 422.52(4) *as determined by 701—subrule 231.2(2)*. The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

ITEM 50. Amend rule 701—52.12(422) as follows:

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. ~~Venture capital credits.~~ Franchise tax credit.
2. ~~Endow Iowa tax credit.~~ Venture capital credits.

REVENUE DEPARTMENT[701](cont'd)

3. ~~University-based research utilization program tax credit.~~ *Endow Iowa tax credit.*
 4. ~~Investment tax credit.~~
 5. ~~New jobs credit.~~ *Wind energy production tax credit.*
 6. ~~Franchise tax credit.~~ *Renewable energy tax credit.*
 7. ~~Alternative minimum tax credit.~~ *New jobs credit.*
 8. ~~Historic preservation and cultural and entertainment district tax credit.~~ *Economic development region revolving fund tax credit.*
 9. ~~Ethanol blended gasoline tax credit.~~ *Alternative minimum tax credit.*
 10. ~~Research activities credit.~~ *Historic preservation and cultural and entertainment district tax credit.*
 11. ~~Assistive device credit.~~ *Corporate tax credit for certain sales tax paid by developer.*
 12. ~~Motor fuel credit.~~ *Ethanol blended gasoline tax credit.*
 13. ~~Estimated tax and payments with vouchers.~~ *Research activities credit.*
 14. *Assistive device credit.*
 15. *Motor fuel credit.*
 16. *Wage-benefits tax credit.*
 17. *Soy-based cutting tool oil tax credit.*
 18. *Refundable portion of investment tax credit, as provided in subrule 52.10(4).*
 19. *Estimated tax and payments with vouchers.*
- This rule is intended to implement Iowa Code sections 15.333, 15.335, 422.33, 422.91 and 422.110.

ITEM 51. Amend subrule **54.2(3)**, paragraph “f,” subparagraph (4), as follows:

(4) All gain or loss shall be included in the denominator of the business activity ratio if an election of inclusion has been made or if the gain or loss is required to be included in the business activity ratio.

Noninclusive examples of gains or losses from the sale, exchange, or other disposition of real or tangible or intangible property may not be included in the computation of the business activity ratio, because to do so would result in an understatement of net income reasonably attributable to Iowa and would include the gain recognized under an election pursuant to Section 338 of the Internal Revenue Code and the gain recognized under Section 631(4 a) of the Internal Revenue Code.

ITEM 52. Amend subrule **54.6(5)**, Example 2, as follows:

EXAMPLE 2: B, a corporation with a commercial domicile in State X, has no physical presence in the state of Iowa. B's only contact with Iowa is B's interest in a limited partnership whose business is conducted within and without Iowa. Ten percent of the limited partnership's gross receipts are derived from the sale of tangible personal property to Iowa purchasers and 90 percent are derived from sales and deliveries to purchasers outside of Iowa. B will include 10 percent of its distributive share of the gross receipts of the partnership in the numerator in calculating its business activity ratio. B will include 100 percent of its distributive share of the gross receipts in the denominator of B's business activity ratio along with B's total sales in calculating its business activity ratio.

ITEM 53. Amend subrule 56.5(1) as follows:

56.5(1) Underpayment penalty.

a. A penalty is imposed for underpayment of the estimated tax by the taxpayer. This underpayment penalty is imposed whether or not there was reasonable cause for the underpayment. *The Iowa penalty for underpayment of estimated tax is computed on Form IA 2220.*

b. The amount of the underpayment penalty is determined at the statutory rate upon the amount of underpayment of the estimated tax for the period from the date the amount is required to be paid until the last day of the fourth month following the close of the income year, or the date the underpayment is paid, whichever is earlier.

EXAMPLE. A calendar year corporation is required to make four equal estimated payments of \$2,500 in the current year to meet the exception to the underpayment of estimated tax penalty. The corporation does not make a first quarter estimated payment which was due on April 30, but makes an estimated payment of \$5,000 for the second quarter on June 30. The corporation is subject to the underpayment of estimated tax penalty for the period from April 30 to June 30, when the underpayment was paid.

ITEM 54. Amend subrule 56.5(2), introductory paragraph and paragraph “a,” as follows:

56.5(2) Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1979.

a. In general. The underpayment penalty will not be imposed for any underpayment if, on or before the date prescribed for payment, the total amount of all payments made of the estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

(1) The tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a taxable year of 12 months and a return showing a tax liability was filed for such year;

(2) An amount equal to a tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year if the taxable year was a taxable year of 12 months or, if the preceding taxable year was a taxable year of less than 12 months, then by placing the income on an annual basis and the law applicable to the preceding year, in the case of a taxpayer required to file a return for the preceding taxable year; or

(3) ~~For tax years beginning before July 1, 1995. An amount equal to 80 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.~~

(4 3) For tax years beginning on or after July 1, 1995. An amount equal to 90 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.

ITEM 55. Amend subrule **56.6(4)**, paragraph “c,” introductory paragraph, as follows:

c. Estimated tax carryforward and how the amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer's estimated tax for the next tax year will not have the overpayment credited to estimated tax, if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities de-

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scribed in Iowa Code section 421.17, subsections 25 and 31.8A.504. These liabilities are for district court debts, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

ITEM 56. Amend subrule 58.3(2) as follows:

58.3(2) Form for filing—financial institutions. Financial institutions as defined by Iowa Code section 422.61(1) shall include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, capital gains, tax computation and tax deposits, ~~investment credit computation and recapture~~, work incentive opportunity credit computation, foreign tax credit computation, ~~alternative~~ minimum tax computation, and statements detailing other income and other deductions.

When a financial institution whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

- a. Capital gains.
- b. ~~Investment credit computation~~ Dividend income and special deductions.
- c. ~~Investment credit recapture.~~
- d c. Work incentive opportunity credit computation.
- e d. Foreign tax credit computation.
- f e. Holding company tax computation.
- g f. Minimum Alternative minimum tax computation.
- h g. Schedules detailing other income and other deductions.

ITEM 57. Amend subrule **58.5(2)**, second unnumbered paragraph, as follows:

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for subsections (a)(4), (c)(1), (d), (f), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments; and the \$40,000 exemption. ~~and the~~ The state alternative tax net operating loss deduction shall be substituted for the amounts in Sections 56(f)(1)(B) and Section 56(g)(1)(B) of the Internal Revenue Code. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

ITEM 58. Amend rule 701—59.1(422), introductory paragraph, as follows:

701—59.1(422) Computation of net income for financial institutions. “Net income” for state purposes shall mean fed-

eral taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in rules 59.2(422) to 59.13(422). The remaining provisions of this rule and rules 59.14(422) to 59.23 24(422) shall also be applicable in determining net income.

ITEM 59. Amend rule 701—59.12(422) as follows:

701—59.12(422) Federal income tax deduction. For tax years beginning on or after January 1, 1980, a deduction for 50 percent of federal income taxes paid or accrued is not allowed. Cash-basis taxpayers are not allowed a deduction for 50 percent of federal income taxes paid during a tax year beginning on or after January 1, 1980, which represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal income tax refund received during a tax year beginning on or after January 1, 1980, shall not be reported as income. For tax years beginning on or after January 1, 1990, because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.61(2 3)“a” does not allow the deduction of federal income taxes, the federal environmental tax must be added to federal taxable income.

This rule is intended to implement Iowa Code sections 422.35 and 422.61.

ITEM 60. Amend subrule 61.5(1) as follows:

61.5(1) Underpayment penalty.

a. A penalty is imposed for underpayment of the estimated tax by the taxpayer. This underpayment penalty is imposed whether or not there was reasonable cause for the underpayment. *The Iowa penalty for underpayment of estimated tax is computed on Form IA 2220.*

b. The amount of the underpayment penalty is determined at the statutory rate upon the amount of underpayment of the estimated tax for the period from the date the amount is required to be paid until the last day of the fourth month following the close of the income year, or the date the underpayment is paid, whichever is earlier.

EXAMPLE. A calendar year financial institution is required to make four equal estimated payments of \$2,500 in the current year to meet the exception to the underpayment of estimated tax penalty. The financial institution does not make a first quarter estimated payment which was due on April 30, but makes an estimated payment of \$5,000 for the second quarter on June 30. The financial institution is subject to the underpayment of estimated tax penalty for the period from April 30 to June 30, when the underpayment was paid.

ITEM 61. Amend subrule 61.5(2), introductory paragraph and paragraph “a,” as follows:

61.5(2) Exception to imposition of the underpayment penalty for taxable years beginning on or after July 1, 1979.

a. In general. The underpayment penalty will not be imposed for any underpayment if, on or before the date prescribed for payment, the total amount of all payments made of the estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

(1) The tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a taxable year of 12 months and a return showing a tax liability was filed for such year;

(2) An amount equal to a tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year if the taxable year was a taxable year of 12 months or, if the pre-

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ceding taxable year was a taxable year of less than 12 months, then by placing the income on an annual basis and the law applicable to the preceding year, in the case of a taxpayer required to file a return for the preceding taxable year; or

~~(3) For tax years beginning before July 1, 1995. An amount equal to 80 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.~~

(4.3) For tax years beginning on or after July 1, 1995. An amount equal to 90 percent of the tax determined by placing on an annual basis the net income for the first 3, 5, 6, 8, 9, or 11 months of the taxable year, whichever is applicable. The net income so determined shall be placed on an annual basis by multiplying it by 12, and dividing the resulting amount by the number of months in the taxable year for which the net income was so determined.

ITEM 62. Amend subrule **61.6(4)**, paragraph “c,” introductory paragraph, as follows:

c. Estimated tax carryforward and how the amount of carryover credit is affected by state tax liability or other state liability of the taxpayer. A taxpayer who files an Iowa return with an overpayment shown on the return and elects to have the overpayment credited to the taxpayer’s estimated tax for the next tax year will not have the overpayment credited to estimated tax, if the taxpayer has tax liabilities or other liabilities with the state that are subject to setoff. Other liabilities with the state that are subject to setoff are those liabilities described in Iowa Code section 421.17, subsections 25 and 31.8A.504. These liabilities are for district court debts, and any other debts of the taxpayer with a board, commission, department, or other administrative office or unit of the state of Iowa.

ITEM 63. Amend subrule **86.1(1)**, definition of “Internal Revenue Code,” as follows:

“Internal Revenue Code” means the Internal Revenue Code of 1954 as defined in Iowa Code section 422.3(4-5) and is to include the revisions to the Internal Revenue Code made in 1986 and all subsequent revisions.

ITEM 64. Amend subrule **86.5(12)**, paragraph “b,” first unnumbered paragraph, as follows:

EXAMPLE. The decedent, a resident of Iowa, had a qualified annuity purchased under a retirement plan through the decedent’s Iowa employer. The beneficiary of the pension is the decedent’s niece who is a resident of Iowa. A portion of the installment payments received by the niece will be included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of installment payments included as net income. However, the remaining portion of the installment payments not reported as net income pursuant to Iowa Code section 422.7 or subject to Iowa income tax at its commuted value would be subject to Iowa inheritance tax—see Iowa Code sections 422.7(4), 422.7(34 31), and 450.4.

ITEM 65. Amend subrule 86.8(2) as follows:

86.8(2) Definitions and technical terms. ~~Reference~~ *References* in this subrule to sections of the Internal Revenue Code mean sections of the Internal Revenue Code of 1954 as defined (and periodically updated) in Iowa Code section 422.4 422.3(5). Technical terms such as, but not limited to, “quali-

fied real property”; “qualified use”; “cessation of qualified use”; “disposition”; “qualified heir”; “member of the family”; “farm”; “farming purpose”; “material participation”; and “active management” are examples of technical terms which have the same meaning for Iowa special use valuation under Iowa Code chapter 450B as the terms are defined and interpreted in 26 U.S.C. Section 203A. It is the purpose of Iowa special use valuation to conform as nearly as possible to the special use valuation provisions of 26 U.S.C. Section 2032A, as can be done within the framework of an inheritance tax instead of an estate tax.

ITEM 66. Amend subrule 89.2(1) as follows:

89.2(1) Confidential information. The state and federal returns, ~~and accompanying schedules, as well as and~~ the taxpayer’s books, records, documents and accounts of any person, firm or corporation, are held confidential, except the information which is deemed a public record by the state and federal law. See 26 U.S.C. Section 6103 of the Internal Revenue Code pertaining to the confidentiality and disclosure of federal tax returns and federal *tax* return information. See rules 701—6.3(17A) and 701—38.5 38.6(422) ~~for regarding~~ the confidentiality of a decedent’s individual income tax returns.

ITEM 67. Amend subrule **89.4(9)**, paragraph “d,” as follows:

d. Withholding agent—general rule. The personal representative of a decedent’s estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to beneficiaries who are nonresidents of Iowa. This *withholding requirement* applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item “5,” for the duty to withhold. The amount of income tax to be withheld shall be computed either based on 5 percent of the taxable Iowa income distributed or according to tax tables provided by the department. See 701—subrule 46.3(1) 46.3(3) for the required withholding form and return to be filed with the department.

ITEM 68. Amend subrule 89.8(2) as follows:

89.8(2) Authority of federal court cases, regulations and rulings. The director has the responsibility to enforce and interpret the law relating to the taxes the department is obligated to administer, including those portions of the Internal Revenue Code which are Iowa law under Iowa Code section 422.4(16). Federal regulations may be interpreted by Iowa courts for state tax purposes. In re Estate of Loudon, 249 Iowa 1393, 1396, 92 N.W.2d 409 (1958). However, the construction of statutes by a court of the jurisdiction where the statute originated properly commands consideration and is highly persuasive. Eddy v. Short, 190 Iowa 1376, 1383, 179 N.W. 818 (1920), In re Estate of Millard, 251 Iowa 1282, 1292, 105 N.W.2d 95 (1960). Therefore, while federal court cases, regulations and rulings interpreting the Internal Revenue Code will be accorded every consideration, the department has the right to make its own interpretation of the Internal Revenue Code as to what constitutes taxable income for Iowa tax purposes, consistent with Iowa statutes and court decisions. Also see rule 701—subrule 41.2 41.2(422).

ITEM 69. Amend subrule **89.8(7)**, paragraph “a,” as follows:

a. In general. 26 U.S.C. Section 641(b) provides that the taxable income of an estate or trust shall be computed in the same manner as the taxable income of an individual, except as modified in Subchapter J of the Internal Revenue Code.

REVENUE DEPARTMENT[701](cont'd)

The gross income of an individual and, therefore, the gross income of an estate or trust, is not given a definitive meaning in 26 U.S.C. Section 641. Subrule 89.8(7), paragraphs “d” to “h q,” describe the most common kinds of income of an estate or trust. However, those paragraphs are not intended to identify all types of taxable income.

ITEM 70. Amend subrule **89.8(7)**, paragraph “c,” first unnumbered paragraph, as follows:

The taxable year of a decedent's estate begins the day after the decedent's death. Income received after the decedent's death is either chargeable to the decedent's estate or to the person succeeding to the property producing the income. See 89.8(5)“a” and 89.8(5)“b.” Income the decedent had a right to receive prior to death, but did not receive before death, is not the decedent's income, but is income in respect of a decedent and is chargeable either to the decedent's estate when received or to the person succeeding to the right to income. See 26 U.S.C. Section 691(a) and applicable federal regulations on what constitutes income in respect of a decedent. Trade or business expenses, interest, taxes and expenses for the production of income owing by the decedent at death, but unpaid, and the allowance for depletion on income not received at death, are not deductible on the decedent's final return. These are deductible by the estate or the person succeeding to the property when paid. Medical expenses incurred by the decedent, but unpaid at death, are not deductible by the estate. These are deductible on the decedent's individual return for the year the expenses were incurred, if paid within one year after the decedent's death and if the medical expense is not claimed as a deduction for federal estate tax purposes under 26 U.S.C. Section 2053. See 26 U.S.C. Section 213(d) and federal regulations thereunder relating to deductible medical expense of a decedent. Funeral expense is not a deductible item for income tax purposes, although it is a deductible expense for federal estate tax and Iowa inheritance tax purposes. See 701—*paragraphs* 86.6(2 1)“g” and 86.6(3)“b.” Unused ordinary and capital losses remaining after the decedent's income tax liability for the year of death has been determined are not carried forward to the decedent's estate. The unused losses terminate with death, except to the extent they may be used by the decedent's surviving spouse. See Rev. Ruling 74-175, 1 CB 52 (1974). The estate of a decedent is a different taxpayer than the decedent.

ITEM 71. Amend subrule **89.8(7)**, paragraph “e,” as follows:

e. Interest. All interest received or constructually received during the taxable year, with the exception of interest, but not capital gain, from federal securities and *from certain bonds issued by the Iowa board of regents pursuant to Iowa Code chapter 262 issued by the state of Iowa and its political subdivisions listed in rule 701—40.3(422)* is income to the estate or trust. Interest from securities issued by a state and its political subdivisions or from foreign securities is included in gross income for Iowa tax purposes, even though the interest may be exempt from federal income tax, *except for those bonds listed in rule 701—40.3(422).*

ITEM 72. Amend subrule **89.8(7)**, paragraph “h,” as follows:

h. Farm and business income—in general. The death of the decedent does not alter the rules under which business and farm income is computed for income tax purposes. However, the decedent's estate as a new taxpayer may adopt a taxable year which is different ~~than~~ from the decedent's taxable year. Also, the decedent's estate may adopt a different accounting method. The rules for determining a gain or loss

from the sale or exchange of assets in the decedent's estate are the same as those for an individual. However, see 89.8(7)“i” and 89.8(7)“j” for the basis for gain or loss from the sale or exchange of property acquired from a decedent and 89.8(7)“l” for depreciation rules for property acquired from a decedent.

ITEM 73. Amend subrule **89.8(7)**, paragraph “m,” as follows:

m. Section 641(c) gain *for sales or exchanges before August 6, 1997.* ~~Iowa Code subsection 422.7(7) adds the~~ The gain that is excluded from federal taxable income under 26 U.S.C. Section 641(c) *for sales or exchanges before August 6, 1997, constitutes to the Iowa taxable gross income of a to the estate or trust.* This gain *for sales or exchanges before August 6, 1997,* is excluded from taxable income for federal purposes because it is subject to a special federal tax under 26 U.S.C. Section 644(a). *This special federal tax was repealed for sales or exchanges occurring on or after August 6, 1997.* The effect of ~~Iowa Code subsection 422.7(7)~~ is to tax the gain *for sales or exchanges before August 6, 1997,* which receives separate treatment for federal income tax purposes, in the same manner as this gain was taxed prior to the enactment of the Federal Tax Reform Act of 1976.

ITEM 74. Amend subrule **89.8(7)**, paragraph “t,” introductory paragraph, as follows:

t. Adjustments to federal taxable income. Iowa Code section 422.4(4 16) provides that the Iowa taxable income of estates and trusts is federal taxable income, without the deduction for the personal exemption, subject to the specific adjustments set forth in Iowa Code section 422.7 and the modifications relating to federal and state income tax specified in Iowa Code section 422.9. The modifications have these results:

ITEM 75. Amend subrule **89.8(7)**, paragraph “t,” numbered paragraphs “8,” “9,” and “10,” as follows:

8. Interest and dividends from securities of a state and its political subdivisions and from foreign securities are included in Iowa taxable income in the year received, regardless of whether ~~it is~~ *such interest and dividends are* exempt from federal income tax. However, see 701—40.3(422) and 89.8(7)“e” for the exemption for ~~interest on Iowa board of regents certain bonds issued by the state of Iowa and its political subdivisions which are not included in Iowa taxable income.~~

9. See 89.8(7)“m” for the includability of the gain *for sales or exchanges before August 6, 1997,* excluded by 26 U.S.C. Section 641(c), in the Iowa taxable income of a trust.

10. See 701—paragraph 86.5(44 12)“b” for the inheritance tax exemption for the portion of an employee's pension or retirement plan subject to Iowa income tax.

ITEM 76. Amend subrule **89.8(8)**, paragraph “c,” as follows:

c. Taxes. The taxes deductible against the gross income of an estate or trust are limited to the taxes deductible for individual income tax purposes under 26 U.S.C. Section 164, subject to the adjustments specified in Iowa Code section 422.9 relating to federal and state income taxes. Real estate and personal property taxes, including the taxes due, but unpaid at death, are only deductible by the estate on the decedent's property which is subject to the personal representative's right of possession. Federal income tax on the income of an estate or trust and federal income tax owing by an Iowa decedent at the time of death, including the federal income tax owing on the decedent's final return for the year of death,

REVENUE DEPARTMENT[701](cont'd)

are deductible by the estate or trust in the year paid. The federal income tax liability of a nonresident decedent must be prorated for tax years on or before December 31, 1981. For tax years on or after January 1, 1982, the federal income tax deduction attributable to Iowa by nonresidents of Iowa shall be the same deduction as is available for resident taxpayers. See 701—subrule 41.3(4) and Iowa Code section 422.5(1)“j.” Examples of taxes not deductible include, but are not limited to: federal estate tax (except federal estate tax paid on income in respect of a decedent); Iowa income and inheritance tax; federal gift taxes; and special assessments increasing the value of property. See 26 U.S.C. Section 275. See 89.8(7)“f” for the proration of federal income tax for foreign situs estates and trusts. In addition, foreign situs estates and trusts are not allowed a deduction from Iowa gross income for real and personal property taxes paid on property located outside Iowa.

ARC 5168B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 7, “Definitions,” Chapter 12, “Claims for Indigent Defense Services,” and Chapter 14, “Claims for Attorney Fees in 600A Terminations,” Iowa Administrative Code.

These proposed amendments implement 2006 Iowa Acts, House File 2789, which revises the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, House File 2672, which modifies eligibility for court-appointed counsel in Iowa Code chapter 600A termination cases.

Interested persons may make written comments or suggestions on the proposed amendments on or before July 12, 2006. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087, faxed to (515)281-7289, or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on July 12, 2006, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5167B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2006 Iowa Acts, House File 2789, and chapter 600A as amended by 2006 Iowa Acts, House File 2672.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 7.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 6.0%
74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective June 9, 2006, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days Minimum 1.90%
32-89 days Minimum 2.85%
90-179 days Minimum 3.15%
180-364 days Minimum 3.45%
One year to 397 days Minimum 3.65%
More than 397 days Minimum 5.00%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 5172B**UTILITIES DIVISION[199]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 474.3, and 474.5, the Utilities Board (Board) gives notice that on June 1, 2006, the Board issued an order in Docket No. RMU-06-5, In re: Delegation of Authority to Issue Procedural Orders (199 IAC 7.1), “Order Commencing Rule Making.” The proposed revisions establish procedures for issuing procedural orders when a majority of the Board is not present due to an emergency or for other reasons. The order containing the background and support for this rule making can be found on the Board’s Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 11, 2006, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be

requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 17A.4, 474.3, and 474.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **199—7.1(17A,476)** by adding “474” to the parenthetical implementation statutes.

ITEM 2. Adopt **new** subrule 7.1(8) as follows:

7.1(8) Authority to issue procedural orders in contested case proceedings, investigations, hearings, and all other dockets and matters before the board when a majority of the board is not available due to emergency, or for any other reason, is granted to a single board member. If no member of the board is available to issue a procedural order due to emergency, or for any other reason, the procedural order may be issued by an administrative law judge employed by the board. If an administrative law judge is not available to issue a procedural order due to an emergency, or for any other reason, a procedural order may be issued by the executive secretary or general counsel of the board.

Procedural orders under this subrule shall be issued only upon the showing of good cause and when the prejudice to a nonmoving party is not great. The procedural order under this subrule shall state that it is issued pursuant to the delegation authority established in 199 IAC 7.1(8) and that the procedural order so issued is subject to review by the board upon motion by any party or other interested person.

ARC 5160B

ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of 2006 Iowa Acts, House File 2754, section 34, the Iowa Department of Economic Development hereby adopts new Chapter 311, “Renewable Fuel Infrastructure Board—Organization,” Chapter 312, “Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites,” and Chapter 313, “Renewable Fuel Infrastructure Program for Biodiesel Terminal Facilities,” Iowa Administrative Code.

These rules describe the structure of the Renewable Fuel Infrastructure Board and establish application procedures for the Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites and the Renewable Fuel Infrastructure Program for Biodiesel Terminal Facilities.

Section 34 of House File 2754 directs the Department to simultaneously adopt emergency rules and submit proposed rules no later than June 1, 2006, to implement the provisions of Division III, Renewable Fuel Infrastructure Programs. This Division establishes a Renewable Fuel Infrastructure Board and two new renewable fuel infrastructure programs, the Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites and the Renewable Fuel Infrastructure Program for Biodiesel Terminal Facilities.

The Iowa Economic Development Board adopted these rules on May 18, 2006, subject to signature of House File 2754 by the Governor. Because the legislation passed by the General Assembly mandated that the Department adopt emergency administrative rules with an effective date no later than June 1, 2006, and, at the time of the Board’s May meeting on May 18, 2006, the bill had not yet been signed by the Governor, the Board adopted these rules contingent upon final signature of House File 2754 by the Governor. The Governor signed House File 2754 on May 30, 2006.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because of the statutory requirement in House File 2754 that the Department adopt rules prior to June 1, 2006.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on May 19, 2006. 2006 Iowa Acts, House File 2754, section 34, mandates the adoption and filing of emergency rules.

These rules are also published herein under Notice of Intended Action as **ARC 5161B** to allow for public comment.

These rules became effective May 19, 2006.

These rules are intended to implement 2006 Iowa Acts, House File 2754, sections 28 to 34.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following **new** rules are adopted.

Adopt the following **new** Part IX:

PART IX

RENEWABLE FUEL INFRASTRUCTURE BOARD

CHAPTERS 300 to 310

Reserved

CHAPTER 311

RENEWABLE FUEL INFRASTRUCTURE
BOARD—ORGANIZATION

261—311.1(81GA,HF2754) Definitions. As used in these rules, unless the context otherwise requires, the definitions in 2006 Iowa Acts, House File 2754, section 28, shall apply to this chapter.

261—311.2(81GA,HF2754) Renewable fuel infrastructure board.

311.2(1) Composition.

a. Board structure. The board shall consist of 11 voting members appointed by the governor. The composition of the board shall be as described in 2006 Iowa Acts, House File 2754, section 29. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

b. Terms. Board members shall be appointed for five-year terms that begin and end as provided by Iowa Code section 69.19. However, the initial members shall be appointed to terms of less than five years to ensure that members serve staggered terms.

c. Department administrative functions. As specified in 2006 Iowa Acts, House File 2754, section 29(1), the Iowa department of economic development shall perform administrative functions necessary for the management of the infrastructure board, and the infrastructure programs as provided in 261—Chapters 312 and 313. The department shall provide the infrastructure board with the necessary facilities, items, and clerical support.

311.2(2) Meetings.

a. The board will generally meet at the department’s offices located at 200 East Grand Avenue, Des Moines, Iowa. By notice of regularly published meeting agendas, the board may hold regular or special meetings at other locations within the state. Meeting agendas will be available on the department’s Web site at www.iowalifechanging.com.

b. The board shall annually elect a chairperson, on a rotating basis, from among its members.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

e. Open session and closed session proceedings will be electronically recorded. Minutes of open meetings will be available for viewing at the department’s offices.

311.2(3) Duties. The board shall perform the duties as outlined in 2006 Iowa Acts, House File 2754, sections 28 to 32, and other functions as necessary and proper to carry out its responsibilities.

311.2(4) Board committees. Reserved.

These rules are intended to implement 2006 Iowa Acts, House File 2754, section 29.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

CHAPTER 312

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES

261—312.1(81GA,HF2754) Purpose. The purpose of the renewable fuel infrastructure program for retail motor fuel sites is to improve a retail motor fuel site by installing, replacing, or converting motor fuel storage and dispensing infrastructure.

261—312.2(81GA,HF2754) Definitions. As used in these rules, unless the context otherwise requires, the definitions in 2006 Iowa Acts, House File 2754, section 28, shall apply to this chapter.

261—312.3(81GA,HF2754) Eligible applicants. To be eligible to receive financial incentives, an applicant shall:

312.3(1) Be an owner or operator of a retail motor fuel site.

312.3(2) Submit an application to the department in form and content acceptable to the department and the board.

312.3(3) Meet the following eligibility requirements established by the board:

- a. Reserved.
- b. Reserved.

261—312.4(81GA,HF2754) Form of award available; award amount.

312.4(1) Forms of award. Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

312.4(2) Amount of award. The maximum award per project shall not exceed 50 percent of the actual cost of making the improvement or \$30,000, whichever is less.

312.4(3) Multiple awards. The board may approve multiple awards to make an improvement to a retail motor fuel site provided the total amount of the awards does not exceed 50 percent of the actual cost of making the improvement or \$30,000, whichever is less.

261—312.5(81GA,HF2754) Application process.

312.5(1) Procedures.

a. Applications may be submitted at any time.

b. Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

312.5(2) Contents of application.

a. Statutory requirements. An application shall include the information required in 2006 Iowa Acts, House File 2754, section 30(4)“b.”

b. Other information required by the board. Reserved.

261—312.6(81GA,HF2754) Review process. The department shall forward completed applications to the underground storage tank fund board for evaluation and recommendation, as specified in 2006 Iowa Acts, House File 2754, section 30(2). The underground storage tank fund board shall then forward the applications to the renewable fuel infrastructure board for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

261—312.7(81GA,HF2754) Application review criteria. Reserved.

261—312.8(81GA,HF2754) Contract administration.

312.8(1) Notice of award. The department shall notify approved applicants in writing of the board's award of financial incentives, including any conditions and terms of the approval.

312.8(2) Contract required. The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the financial incentive established by the board.

These rules are intended to implement 2006 Iowa Acts, House File 2754, section 30.

CHAPTER 313

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINAL FACILITIES

261—313.1(81GA,HF2754) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal facilities is to provide financial incentives to terminal facilities that store and dispense biodiesel or biodiesel blended fuel.

261—313.2(81GA,HF2754) Definitions. As used in these rules, unless the context otherwise requires, the definitions in 2006 Iowa Acts, House File 2754, section 28, shall apply to this chapter.

261—313.3(81GA,HF2754) Eligible applicants. To be eligible to receive financial incentives, an applicant shall:

313.3(1) Be an owner or operator of a biodiesel terminal.

313.3(2) Submit an application to the department in form and content acceptable to the department and the board.

313.3(3) Meet the following eligibility requirements established by the board:

- a. Reserved.
- b. Reserved.

261—313.4(81GA,HF2754) Form of award available; award amount.

313.4(1) Forms of award. Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

313.4(2) Amount of award. The maximum award per project shall not exceed 50 percent of the actual cost of making the improvement or \$50,000, whichever is less.

313.4(3) Multiple awards. The board may approve multiple awards to make improvements to a terminal provided the total amount of the awards does not exceed 50 percent of the actual cost of making the improvement or \$50,000, whichever is less.

261—313.5(81GA,HF2754) Application process.

313.5(1) Procedures.

a. Applications may be submitted at any time.

b. Applications should be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

313.5(2) Contents of application.

a. Statutory requirements. An application shall include the information required in 2006 Iowa Acts, House File 2754, section 31(3).

b. Other information required by the board. Reserved.

261—313.6(81GA,HF2754) Review process. The department shall forward completed applications to the underground storage tank fund board for evaluation and recommendation, as specified in 2006 Iowa Acts, House File 2754,

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

section 31(1). The underground storage tank fund board shall then forward the applications to the renewable fuel infrastructure board for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

261—313.7(81GA,HF2754) Application review criteria. Reserved.

261—313.8(81GA,HF2754) Contract administration.

313.8(1) Notice of award. The department shall notify approved applicants in writing of the board's award of financial incentives, including any conditions and terms of the approval.

313.8(2) Contract required. The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the financial incentive established by the board.

These rules are intended to implement 2006 Iowa Acts, House File 2754, section 31.

[Filed Emergency 5/19/06, effective 5/19/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5171B

SECRETARY OF STATE[721]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 47.7 and chapter 48A, the Secretary of State hereby adopts new Chapter 28, "Voter Registration File (I-VOTERS) Management," Iowa Administrative Code.

The rules are designed to implement the provisions of Iowa Code section 47.7(2) for the establishment of a single, uniform, official, centralized, interactive, computerized statewide voter registration file. The rules prescribe the procedures for access to the file, security requirements and access protocols for adding, changing or deleting file information. The rules also prescribe the process for obtaining voter registration data and lists pursuant to Iowa Code chapter 48A.

These rules do not provide for waivers.

Notice of Intended Action for these rules was published in the April 26, 2006, Iowa Administrative Bulletin as **ARC 5056B**. The following changes from the Notice have been made:

Subrules 28.3(1) and 28.3(2) were substantially rewritten to more accurately reflect the actual practice of duplicate checking by county registrars. The proposed subrules suggested that the duplicate lists were generated by the state registrar when in fact the I-VOTERS software provides that data directly to county registrars.

Subrule 28.3(3) was changed to make the interstate checking of data a mandatory occurrence with cooperating states.

Comments were received from the American Civil Liberties Union of Iowa to the effect that the rules should be expanded to add a provision in rule 721—28.4(48A) to allow for an administrative appeal of the cancellation of a registration due to a felony conviction. Language has been added to subrules 28.4(2) and 28.4(3) to clarify this issue.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary finds that emergency adoption of these rules confers a

benefit upon the public by providing for more accurate voter registration records and registration practices such that these rules should be made effective on July 1, 2006.

These rules are intended to implement Iowa Code section 47.7(2) and chapter 48A.

These rules will become effective July 1, 2006.

The following new chapter is adopted.

CHAPTER 28

VOTER REGISTRATION FILE (I-VOTERS) MANAGEMENT

721—28.1(47,48A) State registrar's responsibility. The state registrar of voters is responsible for the implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration file of every legally registered voter in the state. This file is known as I-VOTERS. These rules regulate access to the file by county registrars and others and set forth protocols for adding, changing or deleting file information.

721—28.2(48A) Access and fees.

28.2(1) The state registrar and county registrars shall grant access to the I-VOTERS database consistent with the Iowa Code and the security plan for the system. Authorized users of the system shall be issued secure password-protected access that is monitored by the state registrar. Access may be denied or revoked by the state registrar for violation of the security policy.

28.2(2) Fees shall be assessed by the state registrar and county registrars for voter registration information provided to the public or to authorized requesters consistent with Iowa Code chapter 48A and the rules of the voter registration commission. The state registrar shall establish appropriate forms for voter registration information requests. Fees collected by the state registrar shall be deposited in the state general fund. Fees collected by county registrars shall be deposited in the appropriate county fund.

28.2(3) Statewide or congressional district voter registration information from I-VOTERS may be obtained only from the state registrar. Voter registration information from I-VOTERS other than statewide or congressional district information may be obtained from the state registrar or a county registrar. A county registrar may provide from I-VOTERS voter registration information for a district or other jurisdiction that is located in whole or in part within the registrar's county.

721—28.3(48A) Duplicate and multiple voter registration record deletion process.

28.3(1) The state registrar shall provide a search function within the I-VOTERS software to search for likely duplicate or multiple voter registration records. County registrars shall have the capability to activate this function.

28.3(2) During each calendar quarter, the county registrar shall activate the search function described in 28.3(1) and review the list of likely duplicate or multiple voter registration records. The county registrar shall resolve duplicate or multiple records for the same voter. No voter shall have more than one voter record. The voter record associated with the most recent registration or other voter-initiated activity shall be considered the voter's current record. The voter shall be registered in the county of current record, and the voter record in any other county shall be merged with the record in the current county. Individual voter history and other voter data shall be transferred to the voter's record in the current county of registration.

SECRETARY OF STATE[721](cont'd)

28.3(3) The state registrar shall periodically engage in interstate checking of voter registration records with cooperating states for the purpose of identifying duplicate or multiple voter registration records. A list of likely matches of records based upon predetermined search criteria shall be timely sent to each county registrar.

28.3(4) Within 15 days of the receipt of a list produced by the state registrar in accordance with 28.3(3), the county registrar shall review the list of likely duplicate or multiple voter registration records and determine the accuracy of the search results. If the voter is found to be registered to vote in another state more recently than in Iowa and that registration has not been canceled, the voter's Iowa registration shall be canceled pursuant to Iowa Code section 48A.30(1)"b."

28.3(5) County registrars shall cooperate with each other to ensure that voter records are properly merged into the current county file.

721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.

28.4(1) Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of convicted felons and a list of convicted felons whose voting rights have been restored. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.4(2) Within 15 days of the receipt of the list produced by the state registrar in accordance with 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results and cancel the registrations of those voters found to be ineligible to vote. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

28.4(3) New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

These rules are intended to implement Iowa Code section 47.7(2) and chapter 48A.

[Filed Emergency After Notice 6/1/06, effective 7/1/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5167B

STATE PUBLIC DEFENDER[493]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and

Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

These amendments implement 2006 Iowa Acts, House File 2789, which revises the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, House File 2672, which modifies eligibility for court-appointed counsel in Iowa Code chapter 600A termination cases.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. These amendments are required because of the statutory changes noted above.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these amendments should be made effective July 1, 2006, because the amendments confer a benefit on the public by increasing payments to court-appointed attorneys handling indigent defense cases.

These amendments are also published herein under Notice of Intended Action as **ARC 5168B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2006 Iowa Acts, House File 2789, and chapter 600A as amended by 2006 Iowa Acts, House File 2672.

These amendments will become effective July 1, 2006.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of "claimant," as follows:

"Claimant" means an appointed attorney, a county, or other person authorized by Iowa law and the rules of criminal procedure to make application to the state for seeking reimbursement of attorney costs or fees, depositions, and other expenses incurred from the representation of an indigent person payable from the indigent defense fund.

ITEM 2. Amend rule 493—12.4(13B,815) as follows:

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time: Class A felonies	\$60/hour
Class B felonies	\$55/hour
All other cases, including all appeals	\$50/hour

Paralegal time:	\$25/hour
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Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006:

Attorney time: Class A felonies	\$65/hour
All other criminal cases	\$60/hour
All other cases	\$55/hour

Paralegal time:	\$25/hour
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12.4(1) Applicability to juvenile cases. In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney at the above-referenced rate \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30,

STATE PUBLIC DEFENDER[493](cont'd)

1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) Appointments before July 1, 1999. In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the above rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) Applicability to appellate contracts. This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

12.4(4) ~~Probation/parole violations~~ *All other cases.* The hourly rate for time spent on probation or parole violation proceedings shall be \$50 per hour. As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

ITEM 3. Amend subrule 12.5(1) as follows:

12.5(1) Frivolous appeals. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$1,000 in each case. *In an appeal to which the attorney was appointed after June 30, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$1,100 in each case.*

ITEM 4. Amend subrule 12.5(2) as follows:

12.5(2) Juvenile cases/joiner. In a juvenile appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case. *In a juvenile appellate case to which the attorney was appointed after June 30, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$550 in the case.*

ITEM 5. Amend subrule **12.6(3)**, paragraph "a," as follows:

a. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000. *In an appeal to which the attorney was appointed after June 30, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$1,100.*

ITEM 6. Amend subrule **12.6(3)**, paragraph "b," as follows:

b. In an appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500. *In an appellate case to which the attorney was appointed after June 30, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$550.*

ITEM 7. Amend rule 493—14.3(13B,600A,815) as follows:

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment specifically for cases under Iowa Code chapter 600A, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after March 11, 2004, and before July 1, 2006, shall be paid at the rate of \$50 per hour, with a fee limitation of \$500 for the trial court proceedings and \$500 for appellate proceedings. *Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, shall be paid at the rate of \$55 per hour, with a fee limitation of \$550 for the trial court proceedings and \$550 for appellate proceedings.* Claims shall not be approved for an amount in excess of this fee limitation.

ITEM 8. Amend subrule **14.5(1)**, paragraph "b," as follows:

b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent, *unless the petitioner is a private child-placing agency as defined in Iowa Code section 238.2, in which case the petitioner need not be indigent;*

[Filed Emergency 5/23/06, effective 7/1/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5169B**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 8, "Professional Conduct of Licensees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 2006, as **ARC 4985B**. This rule is identical to the rule published under Notice of Intended Action.

This amendment replaces the current rule that regulates the offering of engineering or land surveying services by firms. The purpose of this new rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or land surveying services and to guard against the unlicensed practice of professional engineering or land surveying by persons who are not properly licensed to perform such services in the state of Iowa.

Waiver of these rules may be sought pursuant to 193—Chapter 5.

This amendment was adopted by the Board on May 11, 2006.

This amendment shall become effective July 26, 2006.

This amendment is intended to implement Iowa Code sections 542B.6, 542B.21, and 542B.26, and chapter 272C.

The following amendment is adopted.

Rescind rule 193C—8.5(542B) and adopt in lieu thereof the following new rule:

193C—8.5(542B) Engineering and land surveying services offered by business entities.

8.5(1) Purpose of rule. The purpose of this rule is to protect the public from misleading or deceptive advertising by business entities that hold themselves out to the public as providing professional engineering or land surveying services and to guard against the unlicensed practice of professional engineering or land surveying by persons who are not properly licensed to perform such services in the state of Iowa. This rule shall not be construed as restricting truthful advertising by business entities that appropriately place professional engineers or land surveyors in responsible charge of the professional services offered to and performed for the public.

8.5(2) Definitions. For purposes of this rule, the following definitions shall apply:

"Business entity" shall include corporations, partnerships, limited liability companies, persons using fictitious or assumed names, or any other form of entity which may conduct business.

"In responsible charge" means having direct control of and personal supervision over any land surveying work or work involving the practice of professional engineering. One or more persons, jointly or severally, may be in responsible charge. Indicia of being "in responsible charge" include:

1. Obtaining or setting the project or service parameters or criteria.
2. Dictating the manner and methods by which professional services are performed.

3. Establishing procedures for quality control and authority over professional services in a manner that ensures that the professional licensee is in control of the work and of all individuals performing the work under the licensee's supervision.

4. Spending sufficient time directly performing the work or directly supervising the work to ensure that the licensee is familiar with all significant details of the work.

5. Maintaining familiarity with the capabilities and methods of the persons performing professional services, and providing adequate training for all persons working under the licensee's direct supervision.

6. Sustaining readily accessible contact with all persons performing professional services by direct physical proximity, or as appropriate in the licensee's professional judgment, by frequent communication, in clear and complete verbal and visual form, of information about the work being performed.

7. Specifically pertaining to land surveying, reviewing all field evidence and making all final decisions concerning the placement of survey monuments and surveyed lines.

"Professional services" shall include professional engineering and land surveying services, as defined in Iowa Code sections 542B.2(5) and (8) and 542B.27, as applicable to the fact situation at issue.

8.5(3) General rule. Business entities offering professional services to the public must be owned, managed, or appropriately staffed by one or more professional engineers or land surveyors, as applicable, who are in responsible charge of all professional services offered and performed.

8.5(4) Appropriate staffing. The nature and extent of appropriate staffing by licensed professionals is necessarily a fact-based determination dependent on such factors as the nature and volume of professional services offered and performed, the risk of unlicensed practice, the impact of the professional services on the life, health and safety of the public and the public's property, and the representations made to the public. While the legal nature of the business entity's relationship (e.g., owner, manager, employee) with a licensed professional engineer or land surveyor is not necessarily determinative, licensed professionals must be in responsible charge of all professional services offered and performed.

8.5(5) Professional engineering or land surveying firms. Business entities holding themselves out to the public as professional engineering or land surveying firms cannot satisfy the requirements of this rule solely by retaining, through employment or contract, a licensed professional on an as-needed, occasional or consulting basis. Such an arrangement fosters unlicensed practice by the unlicensed owners or managers who place themselves in charge of determining when a licensed professional is needed. When a business entity conveys to the public that it is organized as a firm of licensed professionals, the public has a right to expect that the firm retains the full-time services of one or more licensed professionals. "Full-time" in this context is not measured by hours, but by a licensee's sustained, meaningful, and effective, direct supervision of all professional services performed, whether the firm performs services, for example, 20 hours per month or 80 hours per week.

8.5(6) Restricted services. Business entities that do not generally hold themselves out to the public as professional engineering or land surveying firms, but that do offer some type of professional engineering or land surveying service, shall be appropriately staffed by licensed professionals in a manner that (a) corresponds with the representations made to the public, (b) places licensed professionals in responsible charge of all professional services performed, and (c) guards

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

against the unlicensed practice of professional engineering or land surveying.

8.5(7) Permitted practices.

a. Nothing in this rule is intended to prevent an individual or business entity from truthfully offering services as a project manager, administrator, or coordinator of a multidisciplinary project.

b. Nothing in this rule shall prevent a joint venture arrangement between an engineering or land surveying firm and a business entity that is not owned, managed, or staffed by professional engineers or land surveyors, in which the venturing entities jointly and truthfully offer professional engineering or land surveying services on a project-by-project basis. Licensed professional engineers and land surveyors who participate in such arrangements shall ensure that the public is accurately informed as to the nature of all professional services to be performed and by whom the services will be performed.

8.5(8) Remedies against licensees. Licensed professional engineers or land surveyors who aid and abet the unlicensed offering or practice of professional engineering or land surveying, or who otherwise knowingly participate in a business entity that does not comply with this rule, are engaging in unethical practices that are harmful or detrimental to the public and are subject to disciplinary action by the board.

8.5(9) Remedies against business entities and unlicensed individuals. Pursuant to Iowa Code section 542B.27, the board may by order impose civil penalties against any business entity or unlicensed individual that offers or performs professional services in violation of Iowa Code chapter 542B. The board shall apply the guidelines set forth in this rule in determining whether a violation exists and in establishing an appropriate civil penalty. Civil penalties may not exceed \$1000 for each offense. Each day of a continued violation constitutes a separate offense. In addition to a civil penalty or as an alternative to such remedy, the board may seek an injunction in district court to prevent future violations by business entities or by licensed or unlicensed individuals.

[Filed 5/31/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5170B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.53, the Professional Licensure Division amends Chapter 16, "Impaired Practitioner Review Committee," Iowa Administrative Code.

The amendments remove the requirement that a member of the licensee's board be a member of the Impaired Practitioner Review Committee and add the option for a board member to be invited to attend a meeting of the Committee as needed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 29, 2006, as **ARC 4990B**. A public hearing was held on April 18, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas

State Office Building, Des Moines, Iowa. Several comments were received which noted that a cross reference to Iowa Code chapter 154E needed to be added to definitions of "board" and "'practitioner' or 'licensee,'" and that the term "board" was used where the term "committee" should have been used in subrule 16.6(2). Changes were made to reflect comments.

These amendments were adopted by the Professional Licensure Division on May 3, 2006.

These amendments will become effective July 26, 2006.

These amendments are intended to implement Iowa Code chapter 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—16.1(272C)**, definitions of "board" and "'practitioner' or 'licensee,'" as follows:

"Board" means a health professional licensing board established pursuant to Iowa Code chapter 147, 154A, 154E, or 155.

"Practitioner" or "licensee" means a person licensed under Iowa Code chapter 147, 154A, 154E, or 155.

ITEM 2. Rescind subrule **16.3(7)** and renumber subrule **16.3(8)** as **16.3(7)**.

ITEM 3. Amend subrule 16.4(2) as follows:

16.4(2) ~~Each board shall appoint a committee member designated in subrule 16.3(7). Upon request of the committee, the board chairperson or other licensed designee of the board under which the licensee is regulated may join the committee to provide consultation when a licensee of that board is being reviewed.~~

ITEM 4. Amend subrule 16.6(2) as follows:

16.6(2) The committee may hold a closed session if the committee votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds of the total committee or a unanimous vote of those present. The ~~board~~ committee will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The impaired practitioner review committee shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

[Filed 6/1/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5163B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners amends Chapter 30, "Administrative and Regulatory Authority for the Board of Behavioral Science Examiners," Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 1, 2006, as **ARC 4933B**. A public hearing was held on March 24, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Behavioral Science Examiners on May 12, 2006.

This amendment will become effective July 26, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendment is adopted.

Amend rule **645—30.1(17A,154D)** by adding a **new** definition in alphabetical order as follows:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 5/19/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5162B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners amends Chapter 59, “Administrative and Regulatory Authority for the Board of Cosmetology Arts and Sciences Examiners,” Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 1, 2006, as **ARC 4913B**. A public hearing was held on March 24, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Cosmetology Arts and Sciences Examiners on May 17, 2006.

This amendment will become effective July 26, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 157 and 272C.

The following amendment is adopted.

Amend rule **645—59.1(17A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 5/19/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5174B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners amends Chapter 80, “Administrative and Regulatory Authority for the Board of Dietetic Examiners,” Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 29, 2006, as **ARC 4988B**. A public hearing was held on April 18, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Dietetic Examiners on June 2, 2006.

This amendment will become effective July 26, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendment is adopted.

Amend rule **645—80.1(17A,152A)** by adding the following **new** definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 6/2/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5165B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners amends Chapter 199, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Physical Therapy Examiners,” Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 2006, as **ARC 4961B**. A public hearing was held on April 4, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Physical and Occupational Therapy Examiners on May 19, 2006.

This amendment will become effective July 26, 2006.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The following amendment is adopted.

Amend rule **645—199.1(17A)** by adding the following new definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 5/19/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5166B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners amends Chapter 205, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Occupational Therapy Examiners,” Iowa Administrative Code.

The amendment provides the Board the ability to retain licensure overpayments of less than \$10 to reduce program administrative costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 2006, as **ARC 4960B**. A public hearing was held on April 4, 2006, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Physical Therapy and Occupational Therapy Examiners on May 19, 2006.

This amendment will become effective July 26, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendment is adopted.

Amend rule **645—205.1(17A)** by adding the following new definition in alphabetical order:

“Overpayment” means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

[Filed 5/19/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5164B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners amends Chapter 206, “Licensure of Occupational Therapists and Occupational Therapy Assistants,” Iowa Administrative Code.

The amendments provide additional flexibility in the supervision of occupational therapy assistants during the screening process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 29, 2006, as **ARC 4989B**. A public hearing was held on April 18, 2006, from 1:30 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board of Physical and Occupational Therapy Examiners on May 19, 2006.

These amendments will become effective July 26, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [206.1, 206.8(2), 206.8(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 4989B**, IAB 3/29/06.

[Filed 5/19/06, effective 7/26/06]

[Published 6/21/06]

[For replacement pages for IAC, see IAC Supplement 6/21/06.]

ARC 5176B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 42, “Adjustments to Computed Tax,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVIII, No. 20, p. 1474, on March 29, 2006, as **ARC 5012B**.

Item 1 amends subrule 42.9(1) to provide for the Iowa child and dependent care credit for taxpayers with adjusted gross income of \$40,000 or more, but less than \$45,000, equal to 30 percent of the federal child and dependent care credit, starting with the 2006 tax year.

Item 2 amends the implementation clause for rule 701—42.9(422).

Item 3 adopts new rule 701—42.29(422), which provides for an early childhood development tax credit equal to 25 percent of the first \$1,000 which the taxpayer had paid to others for each dependent aged three to five for early childhood development expenses.

REVENUE DEPARTMENT[701](cont'd)

Rule 701—42.29(422) in Item 3 of the Notice of Intended Action has been changed. Changes to the early childhood development tax credit for the 2006 calendar year only that have resulted from 2006 Iowa Acts, House File 2794, section 24, and the content of paragraph “c” of proposed subrule 42.29(3) have been incorporated into the introductory paragraph of rule 701—42.29(422). However, since the application for the early childhood development credit is no longer needed as a result of 2006 Iowa Acts, House File 2794, section 25, the remainder of subrule 42.29(3) has not been

ITEM 1. Amend subrule 42.9(1) as follows:

42.9(1) Computation of the child and dependent care credit. The child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes). The following is a schedule showing the percentages of federal child and dependent credits allowed on the taxpayers' state returns on the basis of the federal adjusted gross incomes (or net incomes) of the taxpayers *for tax years beginning on or after January 1, 1993*.

*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or After January 1, 1991-1993)	Percentage of Federal Child and Dependent Credit Allowed on 1991 or 1992 for 1993 through 2005 Iowa Return Returns	Percentage of Federal Credit Allowed for 1993 2006 and Later Tax Years
Less than \$10,000	75 %	75 %
\$10,000 or more but less than \$20,000	65 %	65 %
\$20,000 or more but less than \$25,000	55 %	55 %
\$25,000 or more but less than \$35,000	50 %	50 %
\$35,000 or more but less than \$40,000	40 %	40 %
\$40,000 or more but less than \$45,000	30 % No Credit	No Credit 30 %
\$45,000 or more but less than \$50,000	20 % No Credit	No Credit
\$50,000 or more	10 % No Credit	No Credit

*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

ITEM 2. Amend the implementation clause for rule **701—42.9(422)** as follows:

This rule is intended to implement 2005 Iowa Code *Supplement* section 422.11B 422.12C as amended by 1993 Iowa Acts, chapter 172.

ITEM 3. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.29(422) Early childhood development tax credit. Effective for tax years beginning on or after January 1, 2006, taxpayers may claim a tax credit equal to 25 percent of the first \$1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than \$45,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit described in rule 701—42.9(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability. For the tax year beginning in the 2006 calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less

than \$45,000 to be eligible for the credit. If the combined income is less than \$45,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined income.

42.29(1) Expenses eligible for the credit. The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four or five years of age:

a. Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

b. Books that improve child development, including textbooks, music books, art books, teacher editions and reading books.

c. Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

d. Expenses paid for lesson plans and curricula.

e. Expenses paid for child development and educational activities outside the home. These activities include, but are

adopted. In addition, the implementation clause of rule 701—42.29(422) has been updated.

These amendments will become effective July 26, 2006, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 422.12C as amended by 2005 Iowa Acts, chapter 148, and as amended by 2006 Iowa Acts, House File 2794, sections 24 and 25.

The following amendments are adopted.

REVENUE DEPARTMENT[701](cont'd)

not limited to, drama, art, music and museum activities, including the entrance fees for such activities.

42.29(2) Expenses not eligible for the credit. The following expenses do not qualify for the early childhood development tax credit:

a. Any expenses paid to a preschool once a dependent reaches the age of six.

b. Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

c. Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C as amended by 2005 Iowa Acts, chapter 148, and as amended by 2006 Iowa Acts, House File 2794, sections 24 and 25.

[Filed 6/2/06, effective 7/26/06]

[Published 6/21/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.

ARC 5175B

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby amends Chapter 11, "Conservation Practices Revolving Loan Fund," Iowa Administrative Code.

These amendments define the roles and responsibilities of financial partners within the conservation practices revolving loan fund, revise the loan fund allocation process and provide clarification to the existing rules.

These amendments do not contain a waiver provision, but are subject to the Division's general waiver requirements.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on December 7, 2005, as **ARC 4728B**. A public hearing on the proposed amendments was held on January 10, 2006. No comments were received at the hearing or during the comment period.

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on December 7, 2005, as **ARC 4729B**.

The amendments adopted herein have one change from those published under Notice and Adopted and Filed Emergency. The district allocation request date referenced in sub-rule 11.22(1) was changed from February 1 to March 1.

These amendments are intended to implement Iowa Code chapter 161A.

These amendments will become effective on July 26, 2006, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 11] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4728B** and Adopted and Filed Emergency as **ARC 4729B**, IAB 12/7/05.

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